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CENTERS FOR FAITH-BASED AND COMMUNITY INITIATIVES: PROMISE AND PROGRESS

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY AND HUMAN RESOURCES

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

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CENTERS FOR FAITH-BASED AND COMMUNITY INITIATIVES: PROMISE AND PROGRESS

TUESDAY, MARCH 23, 2004

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY AND HUMAN RESOURCES,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2154, Rayburn House Office Building, Hon. Mark E. Souder (chairman of the subcommittee) presiding.

Present: Representatives Souder and Cummings.

Staff present: J. Marc Wheat, staff director and chief counsel; Elizabeth Meyer, professional staff member and counsel; Nicole Barrett, clerk; Tony Haywood, minority counsel; Denise Wilson, minority professional staff member; and Jean Gosa, minority assistant clerk.

Mr. SOUDER. The subcommittee will come to order. Thank you all for coming today. This is part of a long series of faith-based hearings we have been having; many out around the country listening to practitioners. The debate over the role of these State-based organizations and the provision of social services continue to be as heated today as it was 3 years ago when the President announced the creation of the White House Office of Faith-Based and Community Initiatives.

Even as the debate continues, what we know for certain is this: The need for social services will never be fully met. The government acting alone cannot begin to meet the needs of the countless men and women who are facing addiction, homelessness, hunger or illness.

Many faith-based and community organizations across our Nation understand that they have a duty to help those who are less fortunate than they are. We are a Nation richly blessed not only with government resources but also with caring individuals who dedicate their lives to helping others. Through charitable choice and the faith-based initiative, the government has recognized the tremendous resource it has in its faith community and in its neighborhood-based organizations. These groups have the ability to reach out to men and women that the government may never know exists.

We know that for decades the government has worked with large faith-based organizations like Catholic Charities and Lutheran So-

cial Services to provide care to those in need. The faith-based initiative is designed to bring neutrality to the government grant system so that smaller community and faith-based organizations can expand their capacity to help people in their communities that otherwise might be overlooked.

Neutrality toward all applicants requires that the government partner only with secular organizations, in effect recognizing a State-sponsored secularism. But it demands that government look at the merits of each program. Is the program helping substance abusers kick addiction? Is it helping a homeless woman find a job or a home? Is the program making a difference in the life of a child who has lost a parent to prison?

The government does have a responsibility to ensure that its dollars are being spent in a manner consistent with the Constitution. This is why technical assistance in education are key elements of the faith-based initiative. Every organization has a responsibility to think carefully about whether a government grant is a good thing for their organization before they apply. Organizations like the FASTEN have produced training and educational materials for faith-based and community organizations that include a list of questions that organizations should think carefully about before they decide to jump into the fray of competing for government grants, as well as information on what due diligence will require as they administer a grant. The White House also instructs potential applicants to consider carefully what a partnership with the government will mean to their organization. In terms of financial aid, I believe the most effective way that government can assist faith-based and community organizations is through tax credits and vouchers. These forms of aid reduce significantly government intrusion into the daily operation of the provider, and puts the choice of which program to use and where to send private contributions into the hands of men and women who need services and who want to support a social ministry with their personal dollars.

For some time we have heard opponents of the government partnership say faith-based organizations have long had the ability to partner with the Federal Government. All they need to do is form a separate 501(c)(3) and conduct themselves as though they were secular and there is no problem. But we are starting to see that even if the faith-based organization takes the precaution of forming a separate organization to handle those social services it desires to provide, that everything may in fact not be all right. Catholic Charities is an organization that for decades has been held up as an example, even by critics of the faith-based initiative, of how government partnerships with faith-based organizations are working, because they held the service arm of the organization under a separate incorporated organization. Now the California Supreme Court has said that because Catholic Charities offers secular services to clients, the majority of whom are not Catholic and not directly preach Catholic values, it is not a religious organization for the court's purposes and therefore must provide services contrary to Catholic teachings. This intrusion into the right of an organization to define its very identity should frighten leaders of all organizations, faith based and community alike.

This case illustrates the danger we face when government attempts to intrude upon the right of a religious organization to define itself. Not all faith-based organizations hire only members of the same faith, but the vast majority of faith-based organizations desire to hire employees who embody the mission of that organization. It has been argued that if providing services to individuals of all faiths does not alter the integrity of a faith-based organization, neither should a requirement that a faith-based organization to hire individuals of any faith. After all, critics say, the soup is still served and the person is still fed. The argument is faulty. For any faith-based or community organization to hire employees who are dedicated to upholding the values of the organization is not discrimination but a basic right of liberty. Justice Brennan wrote in Corporation of Presiding Bishop v. Amos, "Determining that certain activities are in furtherance of an organization's religious mission and that only those committed to that mission should conduct them is . . . A means by which a religious community defines itself."

The government is acting in an even-handed way when it permits all organizations it funds, religious as well as secular, to hire staff devoted to their respective missions. Abortion rights organizations do not lose their ability to screen out pro-life applicants when they accept government funds. In the same way, faith-based service groups should not lose their religious staffing liberty if they accept Federal grants. Keeping religious staffing legal is the only way to ensure equal opportunity and effectiveness for all organizations and to respect the diversity of faith communities that are part of our civil society.

Today we will discuss a variety of viewpoints related to the faith-based initiative. We will discuss the legal questions that accompany the initiative and we will examine how the initiative is actually playing out both in a research sense but also at the most critical level, the neighborhood level. We will hear from two organizations that are living out the initiative on a daily basis. I know that faith-based and community organizations are making a difference in the lives of thousands of Americans. What we need to work toward is how best to structure the relationships between those organizations and the government. Our discussion today should be lively about how that can be accomplished.

Now I would like to yield to the distinguished ranking member, Mr. Cummings.

[The prepared statement of Hon. Mark E. Souder follows:]

Opening Statement

Chairman Mark Souder

"Legal and Practical Issues Related to the Faith-Based Initiative"

Subcommittee on Criminal Justice, Drug Policy

and Human Resources

Committee on Government Reform

March 23, 2204

The debate over the role of faith-based organizations in the provision of social services continues to be as heated today as it was three years ago when the President announced the creation of the White House Office of Faith-based and Community Initiatives. Even as the debate continues, what we know for certain is this: the need for social services will never fully be met. The government, acting alone, cannot begin to help meet the needs of the countless men and women who are facing addiction, homelessness, hunger, or illness.

Many faith-based and community organizations across our nation understand that they have a duty to help those who are less fortunate than they are. We are a nation richly blessed, not only with government resources, but also with caring individuals who dedicate their lives to helping others. Through charitable choice and the faith-based initiative, the government has recognized the tremendous resource it has in its faith community, and in neighborhood-based organizations. These groups have the ability to reach out to men and women that the government may never know exist.

We know that for decades the government has worked with large faith-based organizations like Catholic Charities and Lutheran Social Services to provide care to those in need. The faith-based initiative is designed to bring neutrality to the government grant system so that smaller community and faith-based organizations can expand their capacity to help people in their communities that might otherwise be overlooked.

Neutrality towards all applicants, requires that government partner only with secular organizations, in effect recognizing a state-sponsored secularism, but it demands that government look at the merits of each program—is the program helping substance abusers kick addiction? Is it helping a homeless woman find a home and a job? Is the program making a difference in the life of a child who has lost a parent to prison?

The government does have a responsibility to ensure that its dollars are being spent in a manner consistent with the Constitution. This is why technical assistance and education are key elements of the faith-based initiative. Every organization has the responsibility to think carefully about whether a government grant is a good thing for their organization before they apply. Organizations like the FASTEN have produced training and educational materials for faith-based and community organizations that include a list of questions that organizations should think carefully about before they decide to jump into the fray of competing for government grants, as well information on what due diligence will require as they administer a grant. The White House also instructs potential applicants to consider carefully what a partnership with the government will mean for their organization. In terms of financial aid, I believe the most effective way that government can assist faith-based and community organizations is through tax credits and vouchers. These forms of aid reduce significantly government intrusion into the daily operation of the provider and puts the choice of which program to use and where to send private contributions in the hands of the men and women who need the services and want to support a social ministry with their personal dollars.

For some time, we have heard opponents of government partnerships say "faith-based organizations have long had the ability to partner with the federal government. All they need to do is form a separate 501(c)3, and conduct themselves as though they were secular, and there is no problem." Well, we're starting to see that even if a faith-based organization takes the precaution of forming a separate organization to handle the social services it desires to provide, that everything may not be all right. Catholic Charities is an organization that for decades has been held up as an example—even by critics of the faith-based initiative-- of how government partnerships with faith-based organizations are working, because they held the service arm of the organization under a separate incorporated organization. Now the California Supreme Court has said that because Catholic Charities offers secular services to clients, the majority of whom are not Catholic, and does not directly preach Catholic values it is not a religious organization for the Court's purposes and therefore must provide services contrary to Catholic teachings. This intrusion into the right of an organization to define its very identity should frighten leaders of all organization, faith-based and community alike.

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organizations hire only members of the same faith, but the vast majority of faith-based organizations desire to hire employees who embody the mission of that organization. It has been argued that if providing services to individuals of all faiths does not alter the integrity of a faith-based organization, neither should a requirement that a faith-based organization to hire individuals of any faith. After all, critics say, the soup is still served and the person is still fed. This argument is faulty. For any faith-based or community organization to hire employees who are dedicated to upholding the values of the organization is not discrimination, but a basic right of liberty. Justice Brennan wrote in *Corporation of Presiding Bishop v. Amos*, "Determining that certain activities are in furtherance of an organization's religious mission and that only those committed to that mission should conduct them is . . . a means by which a religious community defines itself."

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Today we will discuss a variety of viewpoints related to the faith-based initiative. We will discuss the legal questions that accompany the initiative, and we will examine how the initiative is actually playing out, both in a research sense, but also at the most critical level—the neighborhood level. We will hear from two organizations that are living out the initiative on a daily basis. I know that faith-based and community organizations are making a difference in the lives of thousands of Americans. What we need to work towards is how best to structure the relationships between these organizations and the government. Our discussion today should be a lively discussion about how that can be accomplished.

Mr. CUMMINGS. Thank you very much, Mr. Chairman, for holding this important hearing on the legal and practical issues raised by the President's faith-based initiative and its implementation by the Bush administration.

Let me just say from the outset, Mr. Chairman, that I along with many Members of Congress, am concerned about discrimination. As one who has personally experienced discrimination and who knows the painful results of it, I think we have to, at every single juncture where we see discrimination raise its ugly dangerous head, we have to be very careful about it. And sometimes I think that we become very confused about the good coming out at the expense of the harm that may be done when a faith-based organization hires only a certain race of people, a certain religion, because basically the problem is that then they take my tax dollars and discriminate against me, which is incredible. And so, this has been one, a major issue for, I know, my good friend Bobby Scott of Virginia. We have spent in the Congressional Black Caucus a phenomenal amount of time on this. And I guess the thing that bothers me more than anything else is how, when we raise these issues, most of us, like myself being a son of two preachers and very much for faith-based efforts, very much, and for some reason when we raise the issue, folks then say, oh, they must be against churches. Nothing could be further from the truth. Nothing. As a matter of fact, all my life I have seen churches, people reach in their pockets in churches and do all kinds of things that government would normally have been doing, and they do it over and over and over again. They do a good job. But do not take my dollars, or those of the American people and then use those very dollars to discriminate against me, or my children, or any other American. And that is the crux of this situation.

You know, it bothers me that we make these arguments and I will bet there's not one Member of Congress that is against faith-based organizations doing what they do. It basically comes down to an issue of discrimination. And so I have a problem. As I told a group just on Sunday, a lot of times we look at the ends. We look at the ends. And we say, yes, the person who was the addict has been treated. We look at the homeless person and we say, yes, the church, the faith-based organization, has done some wonderful things for that person, and now they are up on their feet. But the end don't always justify the means, because if you come to the end and you basically destroy the very principles of the Constitution and what this country is all about, then I think that you have chipped away at this wonderful thing we call a democracy. You have given a foundation for discrimination and I think, therefore, that the end certainly does not justify the means.

And so it is that I am looking forward to our discussion, but I, you know, I didn't even read my remarks because it just, it upsets me so much that we on this side of the aisle, who have consistently stood up for those things that are humane, consistently stood up for those things that would help people get on their feet, consistently stood up for people who could not stand up for themselves, consistently tried to make sure that tax dollars were distributed in a way where children to reach their God-given rights, consistently stood up for homelessness, consistently, for people so that they are

not homeless, consistently stood up for all of those things that are humane, then for the argument to be turned around to say that you're against discrimination. Then suddenly you're supposed to be against faith-based organizations.

And so I don't take a back seat to anyone with regard to being a humanitarian. But part of that humanity is that you do not discriminate against people with their own money. And with that, Mr. Chairman, I will submit my official statement for the record and look forward to the testimony.

Mr. SOUDER. Thank you.

[The prepared statement of Hon. Elijah E. Cummings follows:]

Opening Statement of

Representative Elijah E. Cummings, D-Maryland-7
Ranking Minority Member

Subcommittee on Criminal Justice, Drug Policy and Human Resources
Committee on Government Reform
U.S. House of Representatives
108th Congress

Hearing on "Legal and Practical Issues Related to Faith-Based Initiatives"

March 23, 2004

Thank you, Mr. Chairman, for holding this important hearing on the legal and practical issues raised by the President's faith-based initiative and its implementation by the Bush Administration.

For those of us who care deeply about the myriad social problems facing our country, and who also believe in the power of faith and in the capacity of people-of-faith acting in a concerted way to address these problems, the idea of increasing the capacity of religious institutions to help people in need is, on its own, a wonderful notion.

Only the most compelling kind of reason would cause us to question a proposal that would extend the reach of helping hands outstretched to the nation's neediest people by Americans motivated by moral compassion and an abiding belief in God. The President's faith-based initiative is such a proposal. The compelling reason to question that proposal is found in the Constitution and in the hard-won legal protections against discrimination and majority domination found in federal anti-discrimination statutes and regulations.

Religion, I'm sure you will agree, is precious, Mr. Chairman. Equally precious in my view, and central to the American ideals of democracy and freedom that we, as members of Congress, are sworn to uphold, is the principle that church and state should avoid being entangled. Indeed, it is this principle that protects the integrity and independence of our religious institutions and, thus, our freedom to express, share, and put into practice our religious beliefs, as we see fit. Government sponsorship of religion and freedom to worship are countervailing notions, bound to conflict. The nation's Founders recognized this, thank God.

As the people's representatives in Congress, we feel called to express and exercise our concern and compassion for our fellow citizens through public service. For most if not all of us, that concern and compassion, and the desire to serve, are informed heavily by the religious traditions in which we were raised. The specific traditions may differ but this experience is something that, by and large, we have in common.

Perhaps unlike you, Mr. Chairman, I can say unequivocally that I would not be in this privileged position but for the federal anti-discrimination laws spawned by the Civil Rights Movement of the last century. For me, that historic popular movement, in which the role of the African American church was both fundamental and front and center, has not only been a source of inspiration to serve; it literally has made it possible for me to serve in this official capacity.

The organizations that gave vital support and direction to the modern Civil Rights Movement are a mix of religious and secular groups that came together under an umbrella, dedicated to the cause of infusing with meaning the Supreme Court's emblem, "equal protection under the law." This community has a unique -- and, in my view, uniquely credible -- perspective on the issue of whether and how government should support the efforts of religious organizations to address social problems for which government has concurrent concern.

It is striking and significant to me that leading individuals and organizations that have devoted their existence to fighting for the right of all Americans to live, work, and worship on equal terms have expressed strong reservations concerning the President's proposal to funnel additional federal dollars to support the social service missions of religious organizations. But no one is better equipped to recognize the specter of governmental interference with individual freedoms when they see it.

What skeptics see when they look at the President's faith-based initiative is a proposal that, while supporting ostensibly moral and compassionate activities, would roll back and whittle down restrictions on the use of federal funds to promote religious proselytizing and discrimination in employment -- injuring the rights of individuals, and undermining religion, in the process.

The leading critics of the faith-based initiative are not anti-religion, as some would like to suggest. On the contrary, they are devoted to preserving the freedom of all Americans to choose and practice religion voluntarily and without obstruction, intervention, or influence by the state. That is exactly what the First Amendment seeks to guarantee and it is precisely what is at stake in the debate over government funding of faith-based social services.

Fortunately, Congress has not taken the bait offered by the Administration in legislation like the CARE Act that passed a divided House and that the Senate, in its greater wisdom (in this instance), scaled back substantially before passing it, resulting in the current deadlock. Yet the Administration defiantly presses on, unilaterally implementing changes in cabinet department regulations to accomplish what the Administration has failed to convince Congress to authorize by legislation.

I, for one, fear that the President ignores the reservations of the legislative branch at the peril of the same "armies of compassion" he hopes to empower with federal funds. The chief beneficiaries of a more restrained approach to encouraging charitable good works could prove to be the would-be recipients of federal funding under the initiative – the religious institutions themselves.

Even apart from the serious issues of federally funded religious proselytizing and discrimination, I am deeply concerned about the ability of religious institutions to participate in government social services programs without incurring great legal and financial risks. The recent example of the Department of Housing and Urban Development's audit of the Congress of National Black Churches is an unfortunate and poignant case in point. More broadly, religion and religious freedom are bound to suffer if government is empowered to make puppets of pastors.

Mr. Chairman, the great freedom-loving democracy that the United States has come to be has no official religion but democracy and freedom. Our highest calling as legislators is to heed the nation's most sacred text: the Constitution and laws of the United States that preserve freedom for all Americans. I hope we'll find a way to work together to provide direly needed and effective social services for problems like homelessness and drug treatment while preserving the secular ideals that protect our religious rights and institutions.

I look forward to hearing the testimony of our witnesses.

##

Mr. SOUDER. I ask unanimous consent that all Members have 5 legislative days to submit written statements and questions for the hearing record, that any answers to written questions provided by the witnesses also be included in the record. Without objection, it is so ordered.

Also ask unanimous consent that all exhibits, documents, and other materials referred to by Members and the witnesses may be included in the record, and that all Members be permitted to revise and extend their remarks. Without objection, it is so ordered.

Now I would like to ask our first panel to stand. It is the custom of this committee to swear in all the witnesses. If you will stand and raise your right hands. Amy Sherman doesn't happen to be here, Dr. Sherman, does she?

[Witnesses sworn.]

Mr. SOUDER. Let the record show that all the witnesses have answered in the affirmative.

OK, we are going to start with the Reverend Barry Lynn, the Executive Director for the Separation of Church and State. Thank you for coming today.

STATEMENTS OF REV. BARRY LYNN, EXECUTIVE DIRECTOR, AMERICANS UNITED FOR THE SEPARATION OF CHURCH AND STATE; HOLLY HOLLMAN, GENERAL COUNSEL, BAPTIST JOINT COMMITTEE; NATHAN DIAMENT, DIRECTOR OF PUBLIC POLICY, UNION OF ORTHODOX JEWISH CONGREGATIONS OF AMERICA; REV. WILSON GOODE, SENIOR ADVISOR ON FAITH-BASED INITIATIVES FOR PUBLIC/PRIVATE VENTURES; AND STEVE FITZHUGH, DIRECTOR, THE HOUSE

Reverend LYNN. Thank you, Mr. Chairman and Mr. Cummings. President Bush's faith-based initiative strikes at the very heart of the separation of church and State in America. This is a system which literally merges the institutions of religion and government in the delivery of social services. It forces taxpayers to support religions with which they may not agree, jeopardizes the well-being of the disadvantaged in America, and subsidizes discrimination in hiring with public funds.

Speaking recently in New Orleans, President Bush expressed his desire to fund programs that, in his words, save Americans one soul at a time. There the President certainly sounded more like a pastor than a President. And in fact, neither the Chief Executive nor Congress were elected to convert people or to promote religion. That is not your or their responsibility.

We continue to careen dangerously down the path of government-supported religion and Congress has a responsibility now to apply the brakes. The Bush administration's course is especially reckless, given that prior practices already allowed faith-based groups to work with government to offer social services of many kinds. These groups merely had to comply with the same commonsense rules that all publicly funded groups must follow. There was no distinction. There was no discrimination.

This initiative, however, presents three very specific problems that I would like to address.

First, the initiative will lead to government-funded religious evangelism. The President has repeatedly stated his desire to fund

groups that permeate their programs with an all-encompassing religious element. In fact, he often argues that this religious component is exactly what makes these programs successful. However, actions speak louder than words, and claims by this administration that tax funds will not be used to promote the spread of religion, frankly, at this juncture in the program, ring very hollow. His proposed legislative language forbids tax support being used for sectarian activities, but frankly I've come to believe that is mere verbiage that will not be enforced in any meaningful fashion. The potential recipients, by the way, of government largesse can see through this ruse. Indeed, according to media reports, one recent audience actually laughed when the President noted that they, of course, couldn't use taxpayer money to proselytize. They understood exactly what he meant. People in desperate need of social services should not have to face the prospect of unwanted religious coercion as the price of getting help from their government.

Second, this initiative will foster taxpayer-funded religious discrimination. The Federal Government has a decades-old national policy of forbidding government funds to promote any form of discriminatory employment practices. Every poll I've seen shows that the American people do not believe that faith-based groups should be able to get tax dollars and then turn around and engage in discrimination when hiring staff to provide what, remember, are supposed to be non-religious services. The public apparently does not want America's civil rights laws placed on the chopping block in the false name of a false form of religious liberty. And this is no theoretical concern. As recently as last month, the Salvation Army in New York was sued by former and current employees who allege religious discrimination. Were the Salvation Army privately funded, of course, this would not be an issue. It is an issue, however, because the Salvation Army in New York alone gets millions of dollars every year, courtesy of the taxpayer. Not surprisingly, those taxpayers want transparency, accountability, and fundamental fairness.

Finally, the faith-based initiative encourages the government to play favorites among religions and this indeed is a very dangerous game to play, one which is very likely to increase interfaith tensions by spurring religious groups to engage in unhealthy forms of competition for very limited tax funding. The administration, of course, denies this as well, but already we have seen evidence to the contrary. Nearly all of the money disbursed under various faith-based initiative programs to date has gone to Christian groups, including one grant to television preacher Pat Robertson's controversial Operation Blessing. James Towey, the Director of the White House Office on Faith-based Initiatives, said last year that Wiccan modern-day pagans are unlikely to get any aid because they are a, "fringe group whose members lack a loving heart." What is that if not rank bigotry on the part of a government official administering this very program?

The preservation of separation of church and State and the idea that we do not use tax dollars to discriminate are vital to the American experiment. The faith-based initiative is a highly controversial experiment on our liberties. Our founders would know exactly why it is wrong, as President James Madison would not

even allow the government to give an Episcopal church here in Washington official corporate status, noting that the church should care for the poor. There was no tax money involved in that, but even the symbolic union of church and State was too much for President Madison. Churches, he said, don't need authority from the government to care for those in need. In his writings James Madison, the father of the Constitution, bitterly denounced government funding of religion. He warned against the government employing religion as an engine of civil policy, calling it an unhallowed perversion of the means of salvation. Those strong words are words that we should all remember as we discuss the faith-based initiative.

For the last number of years I've worked with His Honor Mayor Goode on a joint project started initially by Senator Rick Santorum and former Senator Harris Wofford, and one of the things that we agreed about that is so central to all of this discussion is that we know there are people in need. That is not in question. The only question is how to better deliver meaningful and responsive benefits to the people who are homeless, who are hungry, who are disheartened by their piece of the American experience. And I just think it is absolutely unconscionable that the wealthiest country on the history of the planet Earth is now facing a battle where some religious providers are battling with other religious providers, all of them battling with secular providers, to get the crumbs from the budgetary table. That, I'd like to think every person on this panel would agree, is an inexcusable moral disgrace for America. Thank you very much.

Mr. SOUDER. Thank you.

[The prepared statement of Reverend Lynn follows:]

Mr. Chairman, Ranking Member Cummings, and members of the Subcommittee, thank you for this opportunity to present testimony on behalf of Americans United for Separation of Church and State on the status of the Administration's faith based initiative and the work of the federal agencies in this area. Americans United is a religious liberty organization based in Washington, D.C., with over 70,000 members. Founded in 1947, the organization educates Americans about the importance of church state separation in safeguarding religious liberty and freedom. I am both an ordained minister in the United Church of Christ and a member of the District of Columbia and U.S. Supreme Court bars.

Americans United, along with a large coalition of civil rights, religious, labor, education and other organizations, respects the important role religious groups have played in providing assistance to those in need. However, we believe that recent attempts by the federal government to increase funding of religion through the faith based initiative is both misguided and dangerous.

The faith based initiative represents a dramatic departure from past practices and American traditions. For more than 200 years, religious groups have relied on voluntary contributions for their support. Taxpayer supported religion always has been a controversial notion in America, engendering strong resistance. In fact, most state constitutions contain provisions explicitly barring tax funding of religious institutions.

The current Administration is well aware that government support for religious groups is controversial. Indeed, even as Congress conducts this hearing today on the work of the federal

agencies in promoting the faith based initiative. We are aware that Congress has failed to enact the Administration's efforts to pass a broad based faith based bill. Many Members of Congress have concerns over the serious effects the initiative would have on established civil rights and religious liberty principles. Unable to persuade both houses to pass the legislation, the Administration has chosen to promote the faith based initiative solely by executive fiat, subverting Congress' important role in ensuring that the initiative is lawful and founded on sound and productive policy.

President Bush has frequently bragged about his end run around Congress. In recent speeches in Los Angeles, New Orleans, and elsewhere, the President has noted his frustration that Congress has not passed the initiative, has "stalled" on its "progress," and he has therefore decided to "act" on his own. As a result, the federal agencies have proceeded, through regulatory action, to put into place sweeping policy changes in the areas of civil rights and church state separation that will have a dramatic effect on how the government's important social service delivery programs are conducted -- all without a mandate from Congress.

The Faith Based Initiative Is An Effort to Turn Back the Clock on Longstanding Civil Rights Protections and to Inject Government Funded Discrimination into Federal Policy

Nowhere are the Administration's actions by executive fiat more egregious than in the area of government funded employment discrimination. Congress has failed to enact any of the administration's proposals to roll back longstanding civil rights protections through its promotion of the faith based initiative, yet the effort to water down civil right protections goes on through a parade of executive orders and regulatory action.

The employment rules contained in the faith based initiative threaten a cornerstone principle of our nation's civil-rights laws -- that federal funds and support will not go to persons or organizations that discriminate against others. It is hard to overstate the importance of our shared national commitment to this principle. Not only should all of us be free from discrimination by the government itself, but we also should have the assurance that our government is not providing federal dollars to programs that engage in discrimination.

This principle is longstanding. Sixty years ago, despite the increase in employment as the nation prepared for World War II and provided defense materials to the rest of the free world, minorities were largely excluded from the nation's economy. The use of federal funds as the source of much of the new economic activity compounded the injustice of discrimination. Recognizing the special harm of federal dollars going to persons who discriminate, President Roosevelt signed a landmark executive order prohibiting federal defense contractors from discriminating based on race, religion, color, or national origin. Not only was the Roosevelt Executive Order the beginning of a long national commitment to barring federal funds to entities that discriminate against others, it also was the first national victory of the modern civil rights movement, which has proceeded to greatly expand the scope of antidiscrimination protections to include other minority groups and women.

In subsequent executive orders, Presidents Truman, Eisenhower, Kennedy, and Johnson expanded these protections. Indeed, President Johnson expanded the scope of the orders to cover all federal contracts, including non defense contracts. From 1965 until 2002, Executive Order 11246 governed in this area, banning discrimination in all federal government contracts. The

executive orders also spawned scores of nondiscrimination provisions that bar discrimination in specific federal programs, as well as influenced the development of agency rules that prohibit discrimination by federal contractors and grantees.

It is this fundamental principle of non discrimination, reflected first in these executive orders, and later, in the host of civil rights statutes, that ban discrimination by recipients of federal funds, that our broad coalition is committed to protecting. It is these same protections that the Administration -- under the guise of promoting "freedom of religion" -- has unsuccessfully attempted to roll back through congressional action and instead has proceeded on its own accord to roll back solely through executive action.

For example, in December 2002, President Bush signed Executive Order 13279, providing for the first time an exemption from Order 11246's longstanding broad ban against religious discrimination for religious organizations contracting with the federal government, allowing them to explicitly engage in taxpayer funded religious discrimination. Moreover, the federal government has simultaneously proposed regulations (and already finalized certain ones) to allow religious organizations to engage in employment discrimination in federal programs involving substance abuse counseling, welfare reform, housing, veterans benefits, and many others administered by the Departments of Justice and Education. Among the most radical of these regulations is a final rule in substance abuse programs in which the Administration has instructed religious organizations that they may invoke the Religious Freedom Restoration Act to override our nation's civil rights statutes. (Americans United and several other organizations submitted comments objecting to these proposed regulations on the civil rights and other

grounds, and copies of Americans United's comments are attached as exhibits to this testimony.) Thus, without any congressional approval, the Administration has acted on its own to substantially weaken our nation's fundamental commitment to the principle that federal funds should not go to organizations that discriminate in employment in carrying out federal programs.

There is little appetite for rolling back longstanding civil rights protections in the Senate. Although the House of Representatives has passed several bills to promote the faith based initiative that include language rolling back longstanding civil rights statutes, the Administration has had no success pursuing these objectives in the Senate. Indeed, after the House of Representatives passed the Administration backed bill (H.R. 7) on July 19, 2001, to promote the faith based initiative in a broad array of federal programs, the Senate refused to do so and passed its own version of the faith based initiative after stripping out any provisions that could have created any special advantages for federally funded religious organizations. The sponsors of the legislation realized that a majority of the Senate continued to support the eradication of religious discrimination in federally funded employment positions and did want to roll back any existing civil rights protections. Thus, both the House and Senate have passed vastly narrowed versions of the CARE Act, which contain no provisions that would allow federal taxpayer support for religious discrimination.

Nevertheless, the Administration has come to realize that it cannot undo many of our country's key civil rights protections acting alone; several federal social services programs have, since their creation, ensured that there will be no discrimination based on religion as a statutory matter. As a result, the Administration has sought to undo these civil rights protections as

applied to religious organizations participating in particular federal government programs -- programs that clearly have secular goals and which, as a constitutional matter, must be run in a secular manner.

For example, on May 8, 2003, the House passed the Workforce Investment Act (WIA) reauthorization (H.R. 1261) by a vote of 220-204. Throughout its 21 year history, WIA has contained a civil rights provision barring discrimination based on religion, among other protected classes, in federal job training programs. The House passed bill rolled back that existing civil rights provision for religious organizations participating in WIA, allowing them to discriminate in employment based on religion. Thus, ironically, the Administration chose for the first time to back injecting employment discrimination into the primary federal job training program.

Until last year, the civil rights provision in WIA had never been controversial; indeed, it was included in the original federal job training legislation that then Senator Dan Quayle sponsored. Senator Quayle's legislation passed through a committee chaired by Senator Orrin Hatch, and was signed by President Ronald W. Reagan. This civil rights provision never served as an obstacle to the participation of religiously affiliated organizations in federal job training programs. Indeed, many religiously affiliated organizations participate in WIA programs and comply with the same civil rights provision that applies to all other participants.

The Senate passed version of the WIA authorization (S. 1627) contains no such civil rights rollback. The Senate has properly acted to ensure that our longstanding civil rights protections stay in place.

Likewise, the Administration attempted to drop longstanding civil rights protections in the reauthorization of the Head Start program. Like WIA, Head Start has contained a provision throughout its 22 year history preventing discrimination on the basis of religion in Head Start programs. That provision is non controversial and has never presented an obstacle to the participation of religiously affiliated organizations in the program. On July 25, 2003, the House passed a version of the Head Start bill (H.R. 2210) by a vote of 217-216 that would allow taxpayer dollars to fund religious organizations to discriminate against Head Start teachers and parent volunteers in federally funded Head Start classrooms.

The Administration's attempts to eviscerate longstanding civil rights protections in Head Start likely will meet a similar fate in the Senate, as did the attempts to gut WIA's important nondiscrimination requirements. Although Head Start reauthorization has not reached the Senate floor, the committee-passed version (S. 1940) contains no civil rights rollback for religious organizations.

Proponents of allowing religious organizations to use federal funds to discriminate against their employees argue that their position is consistent with a provision in Title VII of the Civil Rights Act of 1964 that generally permits religious organizations to grant preference to members of their own religion, and to exclude those who do not agree with their religion, when making employment decisions. Yet the Administration's actions in attempting to expand the scope of this limited exemption to be used for federally funded positions could further undermine the nation's civil rights protections by allowing federally funded religious organizations to

require employees to adhere to the religious practices of their organization. For example, several courts have interpreted the religious organization exemption in Title VII to allow a religious employer to require employees to adhere to the teachings and tenets of that religion. The "religious practices" requirement could create a conflict with the enforcement of civil rights laws protecting persons against discrimination on the basis of characteristics such as race, gender, pregnancy status, sexual orientation, or marital status.

These are conflicts that the country can and should avoid. Our nation already went through over a decade of litigation to determine whether Bob Jones University's claim that it had a religious right to discriminate against persons on the basis of race overrode the federal government's interest in denying preferred tax status to groups that discriminate based on race. Bob Jones Univ. v. United States, 461 U.S. 574, 604 (1983). Although Bob Jones University lost that case, we know from experience that other religious institutions have claimed a religious basis for discriminating against others based on gender and pregnancy status, see Boyd v. Harding Academy of Memphis, Inc., 88 F.3d 410 (6th Cir. 1996) (a religiously-affiliated school could dismiss an unmarried, pregnant teacher because premarital sex was against the church's teachings); marital status, see Little v. Wuerl, 929 F.2d 944, 951 (3rd Cir. 1991) (a religiously-affiliated school could fire a teacher who did not have her marriage annulled in accordance with the religion's practices); and sexual orientation, see Hall v. Baptist Memorial Health Care Corp., 215 F.3d 618, 625 (6th Cir. 2000) (a religiously-affiliated school could fire a school counselor after she attained a leadership position in a church that accepted gay and lesbian members). In addition, we should not risk reopening the possibility that groups that discriminate based on race will now renew their requests to receive government funding.

In any event, we believe that, as a statutory matter, the Title VII exemption on its face does not apply to religious organizations running government programs. Put another way, this provision does not on its face allow *federally funded* religious groups to discriminate with federal taxpayer dollars. Moreover, the legislative history of Title VII does not support a conclusion that religious organizations may discriminate with taxpayer money.

Although the Supreme Court upheld the constitutionality of the religious organization exemption in Title VII, Corp. of Presiding Bishop v. Amos, 483 U.S. 327, 336-39 (1987), the Court has never considered whether it is unconstitutional for a religious organization to discriminate based on religion when making employment decisions in programs that the government finances to provide governmental services. Several courts have considered whether a religious organization can retain its Title VII exemption after receipt of *indirect* federal funds, e.g., Siegel v. Truett-McConnell College, Inc., 13 F. Supp.2d 1335, 1344 (N.D. Ga. 1994) (clarifying that its decision permitting a religious university to invoke the Title VII exemption is because the government aid is directed to the students rather than the employer), but only one federal court has decided the constitutionality of retaining the Title VII exemption after receipt of *direct* federal funds, Dodge v. Salvation Army, 1989 WL 53857 (S.D. Miss. 1989). In that decision, the court held that the religious employer's claim of its Title VII exemption for a position "substantially, if not exclusively" funded with government money was unconstitutional because it had "a primary effect of advancing religion and creating excessive government entanglement." Id. The analysis applied by the court in Dodge should apply with equal force to all federal programs that would provide direct federal funds to religious organizations.

Congress must hold the federal agencies accountable for these radical changes to our longstanding civil rights laws, done through executive fiat and in the absence of any final congressional approval. Congress should exercise its oversight responsibilities to ensure that federal agencies are not engaging in any unconstitutional conduct and are continuing the nation's historical commitment to eradicating discrimination paid for by taxpayer dollars.

The Faith Based Initiative Subsidizes Proselytization and Other Sectarian Activities with Tax Funds

It has long been official policy of the United States that the government does not pay for proselytization and the spread of sectarian views. The faith based initiative threatens and undermines this wise and longstanding policy.

When the Administration first announced the faith based initiative in 2001, it took the position that, although public funds could not go towards proselytization, the federal government could still fund programs where faith was inextricably intertwined with the provision of public services. The Administration offered no coherent explanation for how this policy would work in real life.

The *Washington Post* reported on January 31, 2001, "The social service programs funded by President Bush's 'faith-based initiative' could include religious content -- such as Bible reading -- as long as taxpayers' money was used only for lights, chairs or other nonreligious expenses, administration officials said yesterday as they released details of the plan they will send to Congress." Yet the same article also observed, "But the administration's

acknowledgement that clients of faith-based programs may be encouraged to convert to a particular faith, even though no federal dollars would go to buy Bibles or crosses, could add to the concern of critics that the plan could breach the constitutionally ordained separation of church and state."

After much criticism for such a policy, the Administration took the position in formulating the President's faith based legislation in the 107th Congress that the Constitution mandates the separation of religious activities, regardless of the source of funding, from the provision of public services. See H.R. 7, Title II, Section 1991(j). Further, in his testimony before both the Senate and House Judiciary Committees in the 107th Congress, a Department of Justice official argued, "Justice O'Connor requires that no government funds be diverted to 'religious indoctrination,' thus religious organizations receiving direct funding will have to separate their social service program from their sectarian practices."

The Administration seemed to be telling Congress that it recognized and would abide by the constitutional requirement for religious organizations to separate their religious activities from the provision of social services. However, it soon came to light that the Administration was counseling religious groups and conservative allies on how to get around this requirement.

An article by Marvin Olasky in the evangelical magazine *World* discussed this issue in explicit terms. *World* observed, "But wait, say TeamBush sources: Carl Esbeck, senior counsel in the Department of Justice, drafted that 'giveaway' and many other provisions of H.R. 7, and Mr. Esbeck does not give away anything lightly. The Traditional Values Coalition's Mr. [Lou]

Sheldon argues that H.R. 7's provisions will work: 'All it takes is a little bit of creativity.' One executive close to the White House said, 'Esbeck is a master at writing vague language that he knows how to get around.'" ("Rolling the Dice," World Magazine, August 4, 2001)

"The executive said that a homeless shelter that had, say, a short sermon after dinner could still have it by offering those who came a choice between writing a paper after dinner or listening to the message. 'They'll come to the sermon but it's been voluntary, because you've given them an option,' he said. Asked about H.R. 7's mandate to separate the 'religious' and 'nonreligious' parts of programs, a TeamBush insider said that biblical and secular teaching could be interwoven, 'as long as you do it right and keep separate books.'"

Thus, it is clear that the Administration never has abandoned its original position and has instead sought to fund programs that include a generous mix of religion into the content of public social service programs without regard for the current constitutional standards that govern such aid. A year after the House of Representatives passed H.R. 7 with language recommended by the Bush administration's own Department of Justice that purportedly prohibited the intermingling of religious activities in publicly funded programs, a prominent HHS official was still touting the original, pre H.R. 7 policy.

A September 3, 2002, Associated Press dispatch reported, "HHS officials say there's no problem using tax dollars for a program in which prayer is central, a point that is hotly disputed among Americans and that Congress has refused to endorse. The Bush administration has the power to change regulations on its own, although these moves are subject to legal challenge . . .

If tax dollars are used for secular elements of the program -- like a computer or van -- the rest can have a religious base, said Robert Polito, director of the HHS Center for Faith Based and Community Initiatives. 'We wouldn't be called the faith-based office if we weren't trying to see how we can partner with the faith community,' he said. 'We don't have to take the temperature of the religiosity of the program.'" ("Bush Administration Rewriting Charity Rules," Associated Press, Laura Meckler)

A careful review of the Administration's final regulations across a spectrum of federal programs reveals that the rules that are supposed to prohibit the inclusion of religious activity in publicly funded programs are in fact a wink and a nod to encourage such activity. To say that they do not meet the current constitutional standard that is required for religious organizations operating publicly funded programs is an understatement. An independent, nonpartisan legal analysis on the final regulations by the Roundtable on Religion and Social Policy put it succinctly when it stated, "On the most important legal question – the extent to which government may directly finance religious activity – the rules perpetuate a fundamental misunderstanding of the law of the Establishment Clause."

The Administration cannot have it both ways. The President and James Towey, Director of the White House Office of Faith-Based and Community Initiatives, often assert that public funds will not be used to promote religion. Then they highlight examples of clearly sectarian organizations that include religion in all of their activities and point to them as good candidates for taxpayer funding. In a March 3, 2004 speech, President Bush explained why The Fishing School in Washington, D.C. should inspire other faith based groups to apply for federal funds:

"It is based upon God's love. As one of the teachers told me, kids need prayer. Faith teaches them that God can do anything. That's kind of the motto for the program in a way. It's their operating credo. And they're now a recipient of federal money." Is it any wonder that those of us who educate on the importance of church state separation to preserve religious liberty are skeptical when the Administration claims it will respect the separation of church and state?

Let me be clear: I believe that the current Administration is intent on evading constitutional requirements. I do not believe this Administration intends to enforce any alleged "no proselytizing" rules. Indeed, the President has stated repeatedly his belief that it is the overt religious component that makes faith based groups effective. Why, then, would he wish to hamstring these groups with regulations designed to force them to water down their religiosity? The answer is simple: No such regulations or oversight are intended. Claims that church state separation will be respected and that the faith based initiative is not intended to amount to state supported religion are mere verbiage designed to placate advocates of church state separation.

We have not been persuaded; we know that actions speak louder than words. When I hear the President stating that "[w]e want to fund programs that save Americans, one soul at a time" at a church in New Orleans (January 15, 2004), I know that maintaining the separation of church and state is simply not a priority for this Administration -- assertions to the contrary notwithstanding.

As a result, it is critical that Congress make clear to the Administration that appropriate constitutional standards must be established and respected as it acts on its own to finance its faith

based initiative. To do otherwise does a disservice to our Constitution and violates the religious liberty rights of beneficiaries. It also raises serious questions about how government officials can pick and choose among programs sponsored by faith based organizations when religious activity is intertwined in those programs.

The Faith Based Initiative Forces the Government to Play Favorites among Religions

Some have suggested that critics of faith based funding are needlessly causing controversy over a non issue about which religious groups will get funding. Nothing could be further from the truth. This is a compelling issue that raises a host of thorny constitutional and legal issues.

The Administration repeatedly has stated that the government will disburse funds according to programmatic requirements and the merit of the application. Yet there are a number of statements by Administration officials, including the President, that imply that certain faith groups will be excluded wholesale from the process. For instance, when President Bush was campaigning in 2000, he said that groups "preach[ing] hate," such as the Nation of Islam (NOI), would not be eligible for tax funding under the initiative.

Stephen Goldsmith, Special Advisor to President Bush on faith based and not for profit initiatives, has said that Wiccans are not eligible because they are not "humane" enough to provide childcare services. Mr. Towey also recently criticized Wiccans, implying that they are "fringe" group whose members lack "loving hearts."

I am deeply troubled by such statements. The United States enjoys complete religious liberty. This nation does not have a two tiered system of religious groups consisting of "real" religions (which can be showered with tax funds) and "fringe" ones (which can be ridiculed and denied all funding). In fact, under our Constitution, all religions are equal in the eyes of the law, even those with unusual doctrines. Today's "heresy" can easily become tomorrow's established doctrine. It is worth remembering that, well into the 19th century, Roman Catholics in this nation were considered by some to be a dangerous fringe group and in many cases were denied civil protections available to members of the Protestant majority. Groups once viewed as highly controversial -- Mormons, Seventh-day Adventists and Jehovah's Witnesses, to name a few -- are now seen as mainstream.

There is nothing theoretical about this issue. In fact, it presents a series of difficult questions that Administration officials have been reluctant to answer: Who gets the money? Who decides who gets the money? What criteria do decision makers employ? Will the government assemble a non public list of acceptable and unacceptable religions based on their theological positions? Some people troubled by the theology or religious practices of specific groups, such as those of the Unification Church or the Scientologists, must remember that they too would legitimately qualify for government funding under the faith based initiative.

We are repeatedly told that the government should not discriminate against faith based providers because of their faith. Yet it is clear from some of the Administration officials' own statements that they are doing exactly that; they are making judgments about which faiths should

be eligible for funding and which should be excluded, based on personal biases or fears of negative reactions from the public.

It also would be naïve to believe that this process will remain untainted by politics. In 1995, several members of Congress protested when media reports surfaced about the Nation of Islam (NOI) receiving contracts with the Department of Housing and Urban Development to provide security at public housing complexes in several cities. There had been no complaints about NOI's performance by the residents. Indeed, some of them praised the group for scaring off drug dealers. Yet demands surfaced for HUD to cancel the contracts and legislation was introduced in the House of Representatives to do so. Some in Congress insisted that the Nation of Islam was too controversial to receive government funds. Others exhibited a clear political animus towards the group. Ultimately, the NOI lost its contract.

In addition, some legitimate concerns raised about NOI receiving government funding were totally ignored. There was evidence that the NOI discriminated against women and engaged in wide scale prosyletization. As I discussed above, these two factors suggest that NOI should not have received government funds, if the right rules were in place.

President Bush and Mr. Towey have stated repeatedly that all that matters is results. As the NOI flap indicates, however, this is naïve view. Political considerations always will come into play in funding decisions. Well connected, well thought of religious groups likely will have a better shot at federal funds over marginalized groups with poor public images. If taxpayer

support is extended to unpopular religious groups, there likely will be great public pressure to cut it off.

Such political decisions also will have serious legal ramifications. Religious groups that are denied funding or whose funding is cut off due to adverse publicity are not likely to go away quietly. They will seek redress in the courts. It is a well established principle of law that government may not play favorites among religions. "'The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.'" County of Allegheny v. ACLU Greater Pittsburgh Chapter, 492 U.S. 573, 605 (quoting Larson v. Valente, 456 U.S. 228, 244 (1982)). In those cases in which benefits are made available, they must be made available on an evenhanded basis. Is the federal government ready to fund hundreds of religious groups that might demand a slice of the tax pie?

The faith based initiative not only forces the government to play favorites among religions, it also forces secular groups into unhealthy competition with religious groups. Groups that seek federal contracts are very quickly getting the message from this Administration that being faith based is a big plus in the competition for funding. The Administration claims that all it wants is a level playing field, yet evidence indicates that what is really sought is a playing field dramatically tilted toward faith based providers.

We have already seen examples of preferential treatment for faith based organizations. The Department of Health and Human Services awarded $30 million in grants through the Compassion Capital Fund in 2002. One large grant went to Pat Robertson's Operation Blessing,

which than distributed some of the public money to other religious groups of its choice to provide social services. (It is also worth noting that this grant was awarded to Operation Blessing after Robertson publicly criticized the faith-based initiative on his television program. He has not uttered another word of protest since.) Out of 500 applications for this one set of grants, not a single non Christian religious organization received funds.

In 2003, HHS awarded an additional $8.1 million to 60 organizations and once again, not a single grant went to a non Christian religious organization.

A January 13, 2003, *Boston Globe* article reported that a well established homeless shelter for military veterans in a suburb just west of Boston was notified that its federal grant was going to be cut for next year, necessitating the closure of about half of their beds. The Veterans Administration told the paper that the money would be used in some faith based shelters in North Carolina and Utah. The Boston area shelter got the message. It changed its identification to be faith based and received a full grant the following year

Not only is there the specter of favoritism in handing out federal funds as part of this initiative, there is also the concern that many of our religious leaders are being misled in regard to what is involved in operating government programs. At a January 15, 2004, appearance at Union Bethel AME Church in New Orleans, President Bush lamented to the audience that "The problem is, faith based programs only conform to one set of rules, and it's bigger than the government rules." In that same speech when talking about a child care program, he held up a Bible and said, "The handbook of this particular child care is a universal handbook, it's been

around for a long time . . . This handbook is a good book. It's a good go by." As Members of this Committee are well aware, however, the reality is that no matter what the good intentions of a faith based provider might be, at the end of the day it will find out that it must meet and comply with the standards set forth by the federal program and the accompanying regulations that comes with running a government funded social services program.

The idea that the President is downplaying the restrictions that accompany government programs is particularly disturbing when one considers that the Administration insists on permitting direct aid to houses of worship without requiring them to set up separate tax exempt institutions. Without now discussing in depth the constitutional requirements that prevent government directly aiding sectarian institutions, it is important to note that by advancing its faith based policy, the Administration is doing a grave disservice to our religious leaders and our houses of worship. A separately incorporated entity provides a house of worship with a legal firewall between itself and the government, ensuring that the regulations, audits and any liability fall squarely on the separate entity and not the house of worship itself. Yet the Administration, by not fully informing religious institutions of the downsides in participating in the faith based initiative so that they can make informed choices, will leave houses of worship exposed in the end to auditing as well as lawsuits and potential liability for a variety of injuries or errors that such organizations might commit in running government programs.

Religious leaders are also being misled about the scope of this initiative. During a time of budget crisis and rising deficit, the Administration has been hosting seminars across the country specifically targeting faith based organizations for federal funds. The Administration

has spent millions of public dollars teaching faith based organizations about how they can use these funds in their religious programs.

What most people do not understand is that the faith based initiative has not created an additional pool of funds to run social service programs. It is taking money from established programs that rely upon government grants and shifting it to religious organizations, forcing established programs to cut back on their services or to close their doors. Thus, the government is just cutting up an old pie in a new way, instead of baking a new, larger pie.

The Faith-Based Initiative Is Based on Faulty Assumptions About the Effectiveness of Religious Providers

Taking money away from proven social service providers and directing it to untested faith based organizations is a radical step indeed. The very lives of the people who rely on these services may be at stake. Due to the fragile nature of the client population, due deliberation should be undertaken before funding is fundamentally shifted in this way.

Has that occurred? It would appear not. The President, Mr. Towey and other initiative backers repeatedly state that the faith based providers offer services more efficiently and more cost effectively than do government or secular providers. They have advanced these claims even though there is no empirical evidence to support them.

The few studies that are available have not supported the Bush/Towey assertion. Last year, Prison Fellowship issued a study purporting to show that former prison inmates who went through its fundamentalist Christian conversion program has a lower recidivism rate than those

who did not. The study attracted headlines in the papers, but a few months later it was debunked by a University of California-Los Angeles professor who examined the data and concluded that it did not hold up. Inmates who had participated in the Prison Fellowship program had, in fact, a slightly higher recidivism rate. There is a lesson here if we care to learn it: Major changes in social policy should not be made on the basis of "junk science."

There have, in fact, been no federal studies of the effectiveness of faith based groups compared with community based and secular nonprofits. There is precious little data from the states as well, but what is available shows cause for concern. When President Bush was governor of Texas, he instituted his faith based initiative statewide. A statewide study from Texas, conducted by the Texas Freedom Network -- an alliance of 7,500 religious and community leaders -- and covering the period of President Bush's tenure as governor, shows that the faith based initiative he spearheaded there suffers serious problems. This study produced conclusions that we can expect at the national level five years from now. Here are a few examples:

1. Religious childcare providers were exempt from state regulation. As a result, the rates of confirmed abuse and neglect at religious facilities are 25 percent higher that at state licensed facilities.

2. At Teen Challenge, a Christian residential drug treatment program favored by President Bush, state officials uncovered a 49-page list of violations of applicable state regulations. Furthermore, the program has had no credentialed drug

treatment counselors, no chemical dependency services, and was found to be illegally handling medication. Teen Challenge believes its mission is to evangelize people and to teach its residents to function as Christians, applying spiritual principles. This apparently was the only "drug treatment" program it offered to those in need.

3. A group called Jobs Partnership stated that its mission was to help clients "find employment through a relationship with Jesus Christ." $8,000 in taxpayer money went to purchase Bibles.

4. The Institute for Responsible Fatherhood and Family Revitalization was granted $1.5 million in state funds to run a religious sponsored job training program that required "total surrender to Christ." This program beat out a University of Texas job placement program with a 300 times higher success rate.

Texas is slowly learning from its mistakes. In 2001, the Texas state legislature chose not to renew alternative accreditation programs for religious child care providers -- one step in the right direction. But the President refuses to learn from his mistakes. Motivated by adherence to a particular ideology, he continues to insist that faith based providers are always more successful, always more cost effective and always better. No matter how many times the President makes this claim and no matter how forcefully he says it, the empirical evidence is not there to support him.

The Harm To Religion

As a minister and congregant involved with congregations all my life, I would be remiss not to discuss the harm the faith based initiative presents to houses of worship. I have lectured as a guest in hundreds of churches, synagogues and temples all over America. Just about every house of worship I have been in does something to help those in need. It may be as simple as a special collection for the homeless once a year or it could be more involved, such as running full blown soup kitchens, homeless shelters and other services.

Churches do not do these things because the government has asked them or told them to do so. They do them because of a religious impulse that transcends the commands of the state. Religious leaders do not feed the hungry, house the homeless and clothe the naked because someone at HUD is dangling a check.

Social service ministries bring congregants more deeply into the life of a church. When a person is asked by the pastor to dig a little deeper or to go the extra mile to help those in need, that very act of giving and sacrifice builds bonds between the member in the pew and the house of worship that may endure for decades. That spirit of charity and service, underscored by the voluntary impulse, has no government counterpart. It cannot be replaced with a contract from a federal agency or a voucher from a government office.

Yet consider what happens to that impulse when we subsidize religious groups through faith based initiatives. Why should the average man or woman in the pew continue to dig deeper

or even walk the first few steps of that extra mile? After all, there's always a government grant right around the corner. In effect, everyone gave at the office, so why give on Sunday?

We do not have to blow the dust off of old history books to see what government support and tax funding do to religion. Many European nations have what must be one of the greatest of all paradoxes: state established religions enjoy official sanction, but the pews are sparsely filled. That is what "faith based" initiatives have done to religion in Western Europe.

At the end of the day, most of us who oppose faith based initiatives are showing concern to protect the integrity of religion. Far from demonstrating hostility towards religion, we are demonstrating our respect for it. The first step to ensuring that religion preserves its vitality and strength is through ensuring that religious groups stand or fall on their own and never become dependant on the government for any endeavor they seek to undertake.

Conclusion

James Madison, the fourth president of the United States and the father of our Constitution, was a brilliant thinker and architect of government. His accomplishment is no minor one: he shaped the system of government that we take for granted every day.

Madison was a fierce advocate for religious liberty. He was absolutely convinced that religion should stand on its own, unaided by the prop of civil government. In his home state of

Virginia, he worked with Thomas Jefferson to do away with state established religion and to pass a religious freedom law that many scholars consider the precursor to the First Amendment.

As president, Madison was careful to respect the separation of church and state. Indeed, he helped draft the First Amendment and did not want to see any portion of it violated.

In February 1811, Congress sent a bill to Madison's desk. The proposed legislation would have officially incorporated an Episcopal church in the District of Columbia and charged it with the task of caring for the poor and needy. It allocated no public money for this purpose, but Madison nevertheless saw the measure as a threat and vetoed it.

Churches, Madison said in his February 21, 1811, veto message to Congress, did not need to be reminded by the government of their duty to care for those in need. The bill, he asserted, violated the First Amendment and could "be a precedent for giving to religious societies as such a legal agency in carrying into effect a public and civil duty."

If it does nothing else, we know the faith based initiative does this: it gives religious societies a legal agency in carrying into effect a public and civil duty. Madison, the author of our Constitution and our First Amendment would have grave qualms about faith based funding. In fact, he would veto it. From the pages of history, Madison, the author of our Constitution, is speaking to us. What he has to say is important. It is time we began to listen.

Mr. SOUDER. Ms. Hollman, who is the general counsel for the Baptist Joint Committee.

Ms. HOLLMAN. Thank you, Mr. Chairman and Mr. Cummings. On behalf of the Baptist Joint Committee, a nearly 70-year-old religious liberty organization dedicated to the promotion and protection of religious freedom, I submit that the faith-based initiative is riddled with legal and practical problems. Our concerns are not new. We've actually monitored charitable choice and related proposals concerning the funding of religious institutions since 1995. Nor are our concerns trivial. They are fundamental to religious liberty. They stem from our theology, our historical experience, and our respect for the Constitutional standards that have long protected the religious rights of Americans.

From the founding of our country, Baptists have opposed the use of tax dollars to advance religion. Why? Because we believe that when government funds religion it violates the conscience of taxpayers who rightfully deserve to expect the government to remain neutral in religious matters.

Government always seeks to control what it funds, and government subsidization of religion diminishes religion's historic independence and integrity. When the government advances religion in this way, it inevitably becomes entangled with religious practice, divides citizens along religious lines and prefers some citizens, some religions, over others. There's an overarching problem here. There's an inherent conflict between allowing religious social service providers that receive government funding to maintain their distinctive character, practice, and expression and enforcing a Constitutional prohibition against government funding of religious activities such as proselytization, instruction, worship. Either we risk violations or we invite entanglement.

I want to address two specific legal issues. First, the initiative as reflected in the December 2002 Executive order and guidance to faith-based organizations purports to throw open the doors wide for government contracting for any religious organization, regardless of their character. It also disregards time-honored Constitutional protections. The initiative abandons the traditional religious affiliate model, a model that allows religious organizations to partner with government in ways that protect their integrity and avoid the risk of government-funded religion. Under the administration's new approach, the only restriction imposed by the establishment clause is that government money cannot be used directly for inherently religious activities. The administration's guidance casually explains, don't be put off by the term, inherently religious activities. It's simply a phrase that has been used by the courts in church-State cases. Basically it means you can't use part of the direct grant to fund worship, instruction, or proselytization. This simple advice does not accurately reflect the law.

While there is no doubt that religious organizations can participate with government to provide social services, indeed there's a Supreme Court case going back to, I believe, 1899 that supports that proposition. The Supreme Court has not held that any religious entity, regardless of its practice and expression, including houses of worship, can receive government funding without violating the Constitution. Nor has the establishment clause been re-

stricted to this short list of violations for religious worship, instruction, or proselytization. These regulations simply do not capture the full meaning of the establishment clause prohibition on government-funded religion. The regulations unnecessarily leave open and, in fact, encourage the risk that government will fund programs with explicitly religious content and will promote religion.

The second legal issue concerns employment discrimination in government-funded positions. The legal conflict between the Nation's commitment to equal employment, non-discrimination and federally funded programs, and the autonomy of religious organizations that arises in this faith-based initiative has been a major part of the debate and one of the main reasons that the legislation failed before Congress. Despite the obvious conflict, the administration's guidelines give a false impression that religious discrimination in government-funded programs is not only legal, when the only Federal case actually goes the other way, but it also gives the impression, incredibly, that such discrimination is necessary in order to serve people through these programs.

Title VII's statutory exemption for religious organizations does not mention, nor does the legislative history indicate, that the drafters contemplated the exemption's application in the context of federally funded job positions.

Important practical consequences flow from these legal issues. The core values of church-State separation, which protects religious entities, and non-discrimination, are being eroded through changes to administrative regulations. Churches and other religious organizations are enticed into acting in unlawful ways. The administration is inviting greater participation by faith-based organizations and federally funded programs under rules that make them targets for legal challenges. Religious organizations are being encouraged to disregard non-discrimination laws and to proceed in ways that compromise their integrity.

How can claims that the initiative is successful be taken seriously when so little is revealed about where the money is going and how it is being spent? Without legally sound regulations and without real oversight, it is reasonable to assume that money will be improperly used to promote religion and to fund employment positions restricted on the basis of religion.

Reports that government funding of religious organizations is increasing, such as the recent Washington Post article saying that $1.1 billion was now being spent on religious groups, would be of no consequence if adequate Constitutional safeguards were in place. Alarm is warranted, however, when such money is being distributed without respect for our Constitutional safeguards and with the implicit approval of government funding for the promotion of religion and discrimination based upon religion. Thank you.

Mr. SOUDER. Thank you.

[The prepared statement of Ms. Hollman follows:]

TESTIMONY

OF

K. HOLLYN HOLLMAN

ON BEHALF OF

THE BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS

BEFORE THE

SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY,

AND HUMAN RESOURCES

OF THE

COMMITTEE ON GOVERNMENT REFORM

UNITED STATES HOUSE OF REPRESENTATIVES

REGARDING

"LEGAL AND PRACTICAL ISSUES RELATED TO THE

FAITH-BASED INITIATIVE"

TUESDAY, MARCH 23, 2004

Introduction

Thank you, Mr. Chairman, Ranking Member Cummings and members of the subcommittee, for this opportunity to speak to you about an issue that has such a profound impact on religious liberty in our country.

I am K. Hollyn Hollman, general counsel for the Baptist Joint Committee on Public Affairs. I am a member of the Tennessee, District of Columbia and United States Supreme Court bars. The Baptist Joint Committee is an education and advocacy organization that serves fourteen Baptist bodies to promote the historic Baptist commitment to religious liberty. Our mission is to defend and extend God-given religious liberty for all, bringing a uniquely Baptist witness to the principle that religion must be freely exercised, neither advanced nor inhibited by government. For nearly 70 years, the BJC has worked to protect religious liberty.

Since 1995, we have been actively monitoring "charitable choice" and related legislative and administrative proposals concerning the funding of religious institutions. As stated in a Baptist Joint Committee resolution adopted on October 8, 1996:

> From the founding of our country, Baptists have opposed the use of tax dollars to advance religion. Baptists believe that, when the government funds religion, it violates the conscience of taxpayers who rightfully expect the government to remain neutral in religious matters. Knowing that the government always seeks to control what it funds, Baptists have long rejected government's handouts for their religious activities. Government subsidization of religion diminishes religion's historic independence and integrity. When the government advances religion in this way, it inevitably becomes entangled with religious practice, divides citizens along religious lines and prefers some religions over others.[1]

These concerns are not trivial, but fundamental, to religious liberty. They stem from our theology, our historical experience and our respect for the constitutional

[1] See attached copy: "Resolution on The Charitable Choice Provision in the New Welfare Act."

standards that have long protected the religious liberty interests of Americans. Unfortunately, the important issues raised by faith-based initiatives continue to be widely misunderstood, and at times purposefully brushed aside.

Most of the Legal and Practical Problems Related to the Faith-Based Initiatives Arise from a Flaw at the Heart of the Proposal

Just days after being sworn in, President George W. Bush issued executive orders creating the White House Office of Faith-based and Community Initiatives and offices in five cabinet departments. Since then the president has expanded the reach and scope of the faith-based initiatives. In the order creating the White House office, the president stated that the administration would actively seek to "enlist, equip, enable, empower and expand" the work of faith-based and community groups. The administration also sought to break down "barriers" that it said prohibited pervasively religious social service providers from receiving government grants for their work. Indeed, barriers should be eliminated. However, much of what the White House calls barriers are really guardrails keeping faith-based, government-funded programs from falling into a constitutional ditch. Instead of focusing on legitimate barriers, we have seen a disregard for legal safeguards, including constitutionally mandated safeguards that have long protected religious liberty by avoiding government funding of religion.

We applaud the president's recognition that religion can play a vital role in addressing society's social problems. We also understand the role nonprofit organizations can play when cooperating with the government to address these problems. There is a fundamental flaw, however, at the heart of "charitable choice" and a great deal of what is being done under the rubric of "faith-based initiatives." These proposals purport to allow

pervasively religious organizations to receive federal funding without altering their religious character[2] and without violating the ban on government funding of religion. These proposals overlook the inherent conflict between allowing religious social service providers that receive government funding to maintain their distinctive character and enforcing the constitutional prohibition against government funding of religious activities, such as religious worship, instruction or proselytization.

While the flaws became more apparent during debates in the U.S. House of Representatives over the Community Solutions Act (H.R. 7) of 2001 and the CARE Act in the Senate, the aggressive pursuit of faith-based initiatives has proceeded in the administrative branch in a way that largely ignores the difficult legal and practical issues presented.

The Initiative Encourages Funding of Religious Entities Without Regard to Current Legal Standards

The legal and practical problems associated with the faith-based initiatives are apparent from a review of the president's December 2002 executive orders and other guidance from the White House. In essence, the president simply bypassed Congress, adopting by executive order many of the most controversial elements of the faith-based plan.

According to the December 2002 executive orders and guidance to faith-based organizations, the only restriction imposed by the Establishment Clause is that government money cannot be used directly for "inherently religious activities." The official White House guidance on this point is remarkably casual: "Don't be put off by

[2] See Executive Order: "Equal Protection of the Laws for Faith-Based and Community Organizations," December 12, 2002, Section 2 (f).

the term 'inherently religious' — it's simply a phrase that has been used by the courts in church-state cases. Basically, it means you cannot use any part of a direct Federal grant to fund religious worship, instruction, or proselytization. Instead, organizations may use government money only to support the non-religious social services they provide."[3]

Two George Washington University law professors, Ira Lupu and Bob Tuttle, have been closely monitoring developments in the faith-based initiatives plan, as part of The Roundtable on Religion and Social Welfare Policy's ongoing project. In their view, the executive orders may exacerbate the ambiguity that remains about the application of the Establishment Clause in this context. They note that the phrase "inherently religious" has never been used by the Supreme Court "to define the boundary of what the government may finance before it runs afoul of the Constitution's Establishment Clause."[4]

While it is correct that government money cannot be used for religious worship, instruction, or proselytization, that description does not capture the full meaning of the Establishment Clause's prohibition of government-funded religion. Unfortunately, the administrative guidance gives the impression that only those listed activities are prohibited.

Following the president's December 2002 directive to federal agencies to implement the executive orders, a series of new regulations have been proposed and implemented that stretch constitutional boundaries. For example, in new regulations from the Department of Labor, the Supreme Court's decision in *Zelman v. Simmons Harris*,

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[3] See "Guidance to Faith-Based and Community Organizations on Partnering with the Federal Government," December 2002, p. 6.
[4] See Pew Charitable Trusts Press Release, "Roundtable Legal Analysis: President's Faith-Based Orders and Proposed Agency Rule Changes Raise Legal Questions," Jan. 9, 2003.

536 U.S. 639 (2002), is used to support a broad assertion that religious organizations that engage in inherently religious activities may receive federal funds through voucher programs. In fact, it is unclear whether the recent Supreme Court decision upholding the Cleveland voucher program would apply to federal social service programs. The Court in *Zelman* found certain constitutional requirements that must be met to find a voucher program constitutional. Such requirements are not mentioned in the new regulations.

According to the Supreme Court in *Zelman*, among the requirements for constitutionality are that the voucher program must be completely neutral with respect to religion, use of vouchers at a religious institution must be based upon a wholly genuine and independent private choice, the vouchers must pass directly through the hands of the beneficiaries, the voucher program must not provide incentives to choose a religious institution over a non-religious one, the program must provide genuine, legitimate secular options, and there must be a secular purpose for the program. *Id.* Of particular importance to the Court in *Zelman* were the choices of secular alternatives (private, non-religious schools and the public schools) for the voucher beneficiaries. New administrative regulations lack any mention of requirements to provide a secular alternative and fail to provide notice to beneficiaries about their constitutional rights.

Employment Provisions Are Not Supported by Current Law and Create Dangerous Risk of Government-Funded Discrimination

One of the most problematic legal issues related to the faith-based initiatives is the employment provision, which purports to allow religious discrimination in government-funded positions. While we support Title VII's religious organization exemption as it has traditionally applied to privately funded positions, we do not support

extending that exemption to tax-supported positions. When applied to privately funded activities and enterprises, it appropriately protects the church's autonomy and its ability to perform its mission. When extended in the context of the faith-based initiatives, however, the exemption improperly advances one important policy goal, autonomy for religious organizations, over another, nondiscrimination in federally funded job positions.

In the administration's attempts to defend its faith-based policy, it fails to acknowledge any tension between the nation's commitment to equal employment opportunity and the autonomy of religious organizations. Why prize the latter exclusively if the real goal is to provide social services? This legal conflict has been a major subject of debate and one of the main reasons the faith-based legislation failed. The statutory exemption does not mention, nor does the legislative history indicate, that the drafters contemplated the context to which the exemption is now being applied.

Proponents of allowing religious organizations to discriminate even when operating as federally funded programs cite the breadth of the exemption to argue that it should apply even in government-funded positions. Yet, case law does not support the sweeping policy being pursued. It is true that courts have interpreted the exemption not only to apply to clergy, but also to all of the religious organization's employees including support staff, and not only to religious affiliations, but also to religious beliefs and practices, as the United States Supreme Court ruled in *Corporation of Presiding Bishop v. Amos*, 483 U.S. 327 (1987).

The *Amos* case, however, did not involve a religious organization that was receiving federal funding. In fact, the only federal court that has decided the constitutionality of retaining the Title VII exemption after receipt of direct federal funds

denied the exemption. *Dodge v. Salvation Army*, 1989 WL 53857 (S.D. Miss. 1989). In *Dodge*, the court held that the religious employer's claim of its Title VII exemption for a position "substantially, if not exclusively" funded with government money was unconstitutional because it had "a primary effect of advancing religion and creating excessive government entanglement." *Id.* The analysis applied by the court in *Dodge* should apply with equal force to all federal programs that would provide direct federal funds to religious organizations.

We oppose efforts through executive orders and otherwise to permit religious discrimination in hiring in government-funded projects. It really boils down to this: Does the grant recipient intend to promote religion in a government-funded program? If so, it should not accept tax money. If not, there is no justification for religious discrimination.

The administration's regulations acknowledge (albeit inadequately), that government funds cannot be used to support "inherently religious activities" or to discriminate against program beneficiaries. Why then should they want or need to discriminate on the basis of religion in hiring? We can think of no reason other than to press the envelope of permissible religious activities beyond the nebulous confines of the limitations contained in the proposed rules.

Conclusions That There are No Problems with Improper Funding are Unwarranted

In claiming success for the faith-based initiatives, proponents often report an increase of funding to religious organizations and a lack of reported legal challenges. The success of the initiatives, however, cannot be assumed when there is such limited

oversight of the participating organizations and limited information about where the money is going and how it is being spent.[5]

In the meantime, the administration continues to aggressively solicit participation of religious organizations in government programs. A recent *Washington Post* article reported that grants to religious groups now top $1.1 billion, including a sharp rise in FBOs receiving federal funding for the first time. The director of the White House Office of Faith-Based and Community Initiatives described this as a result of leveling the playing field, claiming success for the initiative. The article noted, however, that while the White House report provides the total amount distributed in grants to faith-based groups in 2003, important data such as how large an increase that represents over previous years has not been divulged: "The White House said various agencies awarded from 2 percent (Labor) to 24 percent (HUD) of all their grants to faith-based groups in fiscal 2003. But it did not provide similar percentages for previous years." The problem, of course, is not that federal money is going to religious entities, but that the rules have been changed and that money is going without constitutional protections in place.

[5] See "Charitable Choice: Federal Guidance on Statutory Provisions Could Improve Consistency of Implementation," United States General Accounting Office, Report to Congressional Requesters, September 2002. State and local officials cited in the GAO report expressed different understandings about charitable choice safeguards in place, for example, to protect the religious liberty rights of program participants. Officials in the states covered by the GAO report claimed they received few complaints from clients receiving services from faith-based organizations. However, the report also stated that the actual incidence of safeguard violations were unknown.

Mr. SOUDER. Our next witness is Nathan Diament. He is director of public policy for the Union of Orthodox Jewish Congregations of America.

Mr. DIAMENT. Thank you, Chairman Souder and Ranking Member Cummings, for the opportunity to address you today. The UOJCA is a non-partisan organization in its second century of serving the Jewish community and is the largest orthodox Jewish umbrella organization in the United States, representing nearly 1,000 synagogues and their many members nationwide.

I'll try to touch on some of the issues that have already been raised and just summarize my written testimony which you have before you.

First, a couple of legal issues. The first is the legality of government actions undertaken pursuant to the initiative under the most recent interpretations of the Constitution. The second issue relates to the religious liberty protections afforded to faith-based agencies and their beneficiaries respectively.

But underlying both of these important legal discussions is a more fundamental and philosophical discussion about the role of religious institutions in American society and the unprecedented, highly disturbing efforts to undermine the longstanding liberties and protections afforded to these institutions.

Mr. Chairman and Mr. Cummings, there has been a good deal of progress under the aegis of the faith-based initiative. But as is often the case, there is a great deal of promise which remains to be fulfilled.

First let me briefly comment about the progress. After President Bush launched his initiative in the first month of his administration, I'd suggest to you it became a political Rorschach test, one of those ink blot tests, with some projecting their worst fears upon it. And in fact this initiative does raise complex and critical questions, Constitutional questions and others. But this should really provide an opportunity for cool-headed discussion rather than overheated fear-mongering.

The debate, as you know, became so heated that the initiative, which was previously a bipartisan initiative passed on bipartisan votes in previous Congresses and which both Presidential candidates in the 2000 election agreed upon, became one that only garnered a narrow party-line vote in this House and was promptly stalled in the Senate.

But, as you know, the legislative deadlock just transferred the issue over to the executive branch, and they have undertaken important efforts which have resulted in significant progress. These efforts have resulted in important reforms which have not only opened up Federal grants programs which support social welfare projects, but have also brought real equity into an array of critical Federal programs throughout the government.

And I'd like to give you two brief examples.

The first is, in the year 2000, a severe earthquake struck the northwestern United States and among the scores of damaged buildings and homes was the Seattle Hebrew Academy. Like all those who suffered, this school, a Jewish community school, applied to the Federal Emergency Management Agency for financial disaster relief. Despite meeting every other eligibility criteria having

nothing to do with religion whatsoever, FEMA denied the Hebrew academy funds because of its status as a religious institution.

Many of us were shocked to learn about this FEMA policy. The earthquake did not seem to discriminate when it knocked down the office buildings and the houses and also knocked down the Seattle Hebrew Academy, and we thought it was inappropriate for FEMA to discriminate in its distribution of Federal disaster relief.

Thankfully, the equal treatment philosophy that animates the faith-based initiative prompted the Bush administration to review and then reverse by Executive order this policy of FEMA, and no longer will religious facilities, whether they are schools, churches, synagogues or what have you, be denied their equitable share of Federal disaster aid should a disaster befall them.

A similar issue arose within the Interior Department. There's a program called Save America's Treasures which was established in 1998 as a public-private partnership between the Interior Department's National Park Service and the National Trust for Historic Preservation, and they give out grants to assist historically landmarked sites with their upkeep and preservation costs. But prior to 2003, hundreds of religiously affiliated historic sites in this country were ineligible to apply on the basis of their religious status alone. So whether it was the Old North Church in Boston, the Touro Synagogue in Rhode Island, or countless others around the country, they were ineligible for this program. This too seemed discriminatory and unfair.

The competitive, religion-neutral grants process is designed to ensure America's important architectural treasures are preserved for generations to come. And a 2003 study by the National Trust found the average historic congregation faces up to $2 million of repair costs just by virtue of being a historically landmarked facility. Again the administration reviewed and reversed this practice, and now religious landmarks are not given favored status over non-religious landmarks, but they are treated equally with their secular counterparts.

Now, each of these policy changes is well grounded in detailed legal analysis, some of which I'll touch upon. But, more importantly, what's at their core is that they understand that the Constitution's Establishment Clause, its prescription against the establishment of religion, is not a license for government discrimination against religions but an insistence upon government neutrality toward religion.

While some continue to contend that this understanding of the Constitution's religious clause is incorrect, these critics are in fact outside the main stream of current Constitutional thinking, as evidenced by nothing less than the Supreme Court's most recent rulings involving religious jurisprudence handed down less than 30 days ago. In this case, in the case of *Locke* v. *Davey* decided just last month, the court reviewed a Washington State scholarship program which awarded scholarships to high school graduates based upon religiously neutral criteria, and a student that had wanted to attend an accredited Christian college and met all of the other criteria was denied his scholarship because he was going to major in devotional theology. He sued the State of Washington and said the Free Exercise Clause demanded that he be awarded his criteria.

Now, in fact, the Supreme Court rejected this claim. It said the Free Exercise Clause did not result in his being able to trump Washington State's Constitutional ban on the scholarship. But although the court rejected his claim, the claim by the student, all nine justices unanimously endorsed the proposition that there is no doubt that the State could, consistent with the Federal Constitution, permit recipients of a government scholarship to pursue a degree in devotional theology or engage in other religious activities.

I'll briefly say that other recent Supreme Court decisions, whether it's the 2001 case of the *Good News Club* v. *Milford Central School* or the 2000 case of *Mitchell* v. *Helms,* all support this proposition that government neutrality toward religion is the central animating principle of the establishment clause. And that is also, I would submit to you, the central animating principle of the faith-based initiative.

I see I have run a bit over on time so I will wait for your questions to remark on the free exercise considerations with regard to program beneficiaries and faith-based institutions, and I look forward to doing that.

Mr. SOUDER. Thank you.

[The prepared statement of Mr. Diament follows:]

TESTIMONY
of
NATHAN J. DIAMENT, Esq.
Director of Public Policy –
Union of Orthodox Jewish Congregations of America

March 23, 2004
United States House of Representatives
Committee on Government Reform –
Subcommittee on Criminal Justice, Drug Policy
and Human Resources

With regard to

"Current Issues Associated with the Faith Based Initiative"

UNION OF ORTHODOX JEWISH CONGREGATIONS OF AMERICA
800 EIGHTH STREET, NW, WASHINGTON, DC 20001
TEL: 202-513-6484 FAX: 202-289-8936

Introduction

Thank you, Chairman Souder and Ranking Member Cummings for the opportunity to address this hearing today. My name is Nathan Diament and I am privileged to serve as the director of public policy for the Union of Orthodox Jewish Congregations of America. The UOJCA is a non-partisan organization in its second century of serving the Jewish community, and is the largest Orthodox Jewish umbrella organization in the United States representing nearly 1,000 synagogues and their many members nationwide.

I come before you today to address several issues that are relevant to the recent efforts to expand the long-existing partnership between government and faith-based institutions in the United States: the first is the legality of government actions undertaken pursuant to the initiative under the most recent interpretations of the U.S. Constitution; the second issue relates to the religious liberty protections afforded to faith-based agencies and their beneficiaries, respectively, under the initiative's programs. But underlying both of these important legal discussions, is a more fundamental and philosophical discussion about the role of religious institutions in American society and the unprecedented, highly-disturbing efforts to undermine the longstanding liberties and protections afforded to these institutions.

Mr. Chairman, there has been a good deal of progress under the aegis of the faith-based initiative; but, as is often the case, there is a great deal of promise which remains to be fulfilled.

But let me first comment about the progress. After President Bush launched this initiative in the first month of his Administration, it became a political "Rorschach test," with some interest groups projecting their worst fears upon it.[1] The fact that this initiative raises complex and critical questions provided an opportunity for some to engage in, frankly, overheated fear-mongering rather than coolheaded discussion. The debate, as you know, became so heated that an initiative which had previously passed on bipartisan votes and upon which both presidential candidates in the 2000 election agreed,[2] garnered only a narrow party-line vote in this House and was promptly stalled in the Senate.

This legislative deadlock did not result in the abandonment of the President's effort to "level the playing field" so that faith-based groups could serve the needy more productively in partnership with the public sector. Rather, it drove the effort into the cabinet departments which, as you are aware, have worked to reform existing practices and issue new regulations to achieve some of the initiative's objectives.

These efforts have resulted in significant progress. They have resulted in important reforms which have not only opened up federal grant programs which support social welfare projects to faith-based groups, but have brought real equity to an array of critical federal programs throughout the government's activities. Allow me to illustrate with two representative examples.

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[1] *See*, Diament, *A Faith-Based Rorschach Test*, The Washington Post, March 20, 2001.

In the year 2000, a severe earthquake struck the northwestern United States. Among the scores of damaged buildings and homes was the Seattle Hebrew Academy in Washington State. Like all those who suffered, the Hebrew Academy applied to the Federal Emergency Management Agency for financial disaster relief funds. Despite meeting every other eligibility criterion, FEMA denied the Hebrew Academy funds because of its status as a religious institution. Many of us were shocked to learn of this FEMA policy. The earthquake did not discriminate among which institutions to strike, yet FEMA was discriminating in its relief efforts. Thankfully, the equal treatment philosophy of the faith-based initiative prompted the Administration to review and then reverse, by executive order, this policy of FEMA. No longer will religious facilities be denied their equitable share of aid should disaster befall them.

A similar issue arose within the Department of the Interior. The Save America's Treasures program was established in 1998 as a public-private partnership between the Interior Department's National Park Service and the National Trust for Historic Preservation to assist historically landmarked sites with their upkeep and preservation costs. But prior to 2003, the hundreds of religiously affiliated historic sites in this country were ineligible to apply on the basis of their religious status alone. This too seemed discriminatory and unfair. The competitive, religion-neutral, grants process is designed to ensure America's important architectural treasures are preserved for generations to come. A 2003

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[2] *See* Remarks by Vice President Al Gore on the Role of Faith-Based Organizations, delivered to the Salvation Army, Atlanta, GA, May 24, 1999, accessible at http://www.conservativenews.org/specialreports/gore990525a.html

study by the National Trust found that the average historic congregation faces up to $2 million of repair costs. Again, the Administration reviewed and reversed this practice. Religious landmarks are not given favored status, but they are treated equally with their secular counterparts and will be preserved as well for future generations.[3]

Now, each of these policy changes is well grounded in detailed legal analyses,[4] some aspects of which I will touch upon momentarily. But more importantly, they are consistent with a fundamental and mainstream understanding that the constitutional proscription against the "establishment" of religion is not a license for the government to discriminate against religion, but an insistence upon the government's neutrality toward religion.[5] While some continue to contend that this understanding of the Constitution's religion clauses is incorrect, these critics are, in fact, outside the mainstream of current constitutional thinking – as evidenced by nothing less than the Supreme Court's most recent ruling involving its religion jurisprudence handed down less than thirty days ago.

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[3] Anticipating my discussion below, it is interesting to note that, despite the criticism from some interest groups, the concept of providing federal assistance for the physical preservation of religious and marks is sufficiently "mainstream," that new legislation has been proposed – with broadly bipartisan cosponsorship – to extend such programs further. *See* H.R. 1446, California Missions Preservation Act.

[4] *See* Department of Justice Office of Legal Counsel Memorandum Opinion for the General Counsel Federal Emergency Management Agency, September 25, 2002, accessible at http://www.usdoj.gov/olc/FEMAAssistance.htm; and Department of Justice Office of Legal Counsel Memorandum Opinion for the Solicitor Department of Interior, April 30, 2003, accessible at http://www.usdoj.gov/olc/OldNorthChurch.htm

[5] "'It has never been thought either possible or desirable to enforce a regime of total separation'...nor does the Constitution require complete separation of church and state; it affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any." *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984).

Of course, the main focus and goal of the initiative has not been to bring the prevailing constitutional doctrine of neutrality toward religion to historic preservation programs, or even disaster relief, but to better leverage the capacity of what President Bush called "America's armies of compassion" so that those in need are more adequately served. On this front, there appears to have been some progress. According to a recent Administration announcement, "grants to faith-based organizations increased substantially" over the last two fiscal years, at least in the two cabinet departments that have comparison data available.[6] On the surface, this certainly appears to be a positive trend, but I must defer to experts at data analysis such as Dr. Sherman to really uncover and analyze what progress is being made on the ground. Thus, I return to the issues associated with the initiative's constitutional acceptability.

The Constitutional Basis for Government's Neutrality

Support for this neutrality-centered view can be found in many Supreme Court precedents the most recent of which is *Locke v. Davey* decided just last month.[7] There, the Court reviewed a Washington State scholarship program which awarded scholarships to high school graduates based on three religiously neutral criteria: (i) the student graduated in the top 15% of his/her high school class; (ii) the student's family income must be less that 135% of the state's media; and (iii) the student must enroll in an

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6 http://www.whitehouse.gov/government/fbci/CompassionFS3-3-04.pdf

7 2004 U.S. Lexis 1626 (February 25, 2004).

accredited college or university within Washington State. Joshua Davey met all these criteria and was awarded a scholarship. The scholarship was revoked when he declared "devotional theology" as one of his two majors at an accredited Christian college. Washington asserted that its state constitution barred it from awarding a scholarship for someone, such as Davey, who was studying to become a minister. Davey sued the state, asserting that this was an infringement of his federal constitutional right to the Free Exercise of religion. Davey's claim was rejected by the U.S. Supreme Court on the grounds that the federal Free Exercise Clause does not trump Washington's state constitutional ban on publicly funding a person studying for the ministry.

But although the Court rejected Davey's claim, all nine justices unanimously endorsed the proposition that "there is no doubt that the State could, consistent with the Federal Constitution, permit [recipients of a government funded scholarship] to pursue a degree in devotional theology."[8] Moreover, the majority opinion, without concurrence or qualification by any justice, noted that the scholarship program "goes a long way toward including religion in its benefits. The program permits students [on scholarship] to attend pervasively religious schools...and...students are...eligible to take devotional theology courses."[9] The only bar is to accepting a state scholarship and taking such courses for the narrow purpose of becoming a member of the clergy.

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[8] 2004 U.S. Lexis at *12, emphasis supplied.

[9] 2004 U.S. Lexis *21.

This latest ruling from our highest court clearly indicates that the principle of government neutrality toward religion is the animating principle of the First Amendment's Establishment Clause.

It is also worth considering the Supreme Court's opinion in the 2001 case of *Good News Club v. Milford Central School,*[10] where the Court engaged in a more detailed discussion of the neutrality principle. There, the Court reviewed the policy of a New York school district that allowed its public school facilities to be used for meetings by a wide range of civic and youth groups after school hours, but refused to allow a Christian youth group, the Good News Club, to use facilities for its meetings due to their religious content. Among the reasons the school district offered in support of its policy was that it was necessitated by the Establishment Clause. The Court ruled, by a 6-3 vote, that the school district's policy of exclusion violated the Free Speech rights of the Good News Club and that the Establishment Clause provided no basis for tolerating this violation.

In its discussion of the Establishment Clause, the Court noted that it has "held that 'a significant factor in upholding governmental programs in the face of Establishment Clause attack is their neutrality toward religion."[11] Moreover, the Court noted that the suggestion that treating the religious youth group on an equal basis with secular groups "would do damage to the neutrality principle defies logic. For the 'guarantee of neutrality is respected, not offended, when the government, following neutral criteria and

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[10] 533 U.S. 98 (2001).

[11] *Id.* at 114, *quoting Rosenberger v. Univ. of Virginia*, 515 U.S. 819, 839 (1995).

evenhanded policies, extends benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse.'"[12]

The Court addressed several other aspects of the Establishment Clause challenge, the most relevant of which for this discussion is the concern over whether granting a religious entity a government benefit – even as a matter of neutrality – would be perceived as government endorsement of religion. The Court emphatically rejected this assertion stating: "We decline to employ Establishment Clause jurisprudence using a modified heckler's veto, in which a group's religious activity can be proscribed on the basis of what the...members of the audience might misperceive."[13]

While the question of to what degree religious groups may benefit from public resources was at issue in the *Good News* litigation, it is also the case that the government was being asked to permit a religious group to enjoy a relatively small and indirect benefit from public resources – the use of an otherwise empty public school classroom.[14] In the case of *Mitchell v. Helms*, decided the previous year,[15] the issue was whether the Establishment Clause would permit religious schools to benefit from government

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[12] *Id.*

[13] *Id.* at 119.

[14] Another possible distinction is that the Good News Club possessed a compelling Free Speech claim in its case, that serves as a counterweight to the Establishment Clause concerns. The anemic reading of the Free Exercise Clause afforded by the current Court, *see City of Boerne v. Flores*, 117 S.Ct. 2157 (1997), unfortunately provides no such counterweight, although it should.

[15] 530 U.S. 793, 120 S.Ct. 2530 (2000).

expenditures – arguably a closer analog to the issues raised in the faith-based initiative context.

In *Helms*, like *Good News*, six of the nine justices came down squarely on the side of the neutrality view of the Establishment Clause.[16] The issue before the Court was the constitutionality of a federal grant program which allows local education agencies to use federal funds for the purchase of supplementary educational materials, including textbooks and computers, for schools within their jurisdiction.[17] Because the aid was also made available to parochial schools within the jurisdiction, it was challenged as a violation of the Establishment Clause.[18] The Court rejected this challenge.

Justices Thomas, Rhenquist, Kennedy and Scalia rejected the challenge on the basis of a neutrality-centered understanding of the Establishment Clause without any qualifications. For these justices, so long as secular government aid is provided to religious institutions on the basis of religion-neutral criteria it does not violate the Establishment Clause, and the constitutionality of currently enacted and pending charitable choice laws is unquestionable.

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[16] This position is clearly enunciated by the plurality opinion of Justices Thomas, Rhenquist, Scalia and Kennedy and is at the core of the concurrence by Justices O'Connor and Breyer.

[17] Chapter 2 of the Education Consolidation and Improvement Act of 1981, Pub. L. 97—35, 95 Stat. 469, as amended, 20 U.S.C.§ 7301—7373.

[18] Many public interest organizations, including the UOJCA, filed friend of the court briefs in the *Helms* case. Not surprisingly, those who question the neutrality principle today in the context of charitable choice also questioned it there. It is worth noting that the Solicitor General, on behalf of Secretary of Education Richard Riley, argued in support of the program's constitutionality. *See*, http://supreme.lp.findlaw.com/supreme_court/docket/decdocket.html#98-1648.

Justice O'Connor, joined by Justice Breyer, also invoked the principle of neutrality, but with qualifications.[19] Inasmuch as this concurrence was essential to the Court's holding, it can be said that it is the O'Connor opinion that is controlling in *Helms*. At the same time, it must be noted that Justice O'Connor did not write a concurring opinion in the *Good News* case taking exception to the majority's strong focus upon the neutrality principle – as she did in *Helms*.

Working with the framework she developed previously in *Agostini v. Felton*,[20] Justice O'Connor determined that the program at issue did not violate the Establishment Clause because it furthered a secular purpose, did not have the primary effect of advancing religion,[21] and did not raise the likelihood that an "objective observer"[22] would believe the program was a governmental endorsement of a particular religion. It is important to note that, as part of this analysis, Justice O'Connor, like the *Helms* plurality, explicitly rejected the precedents of *Meek v. Pittinger*[23] and *Wolman v. Walter*,[24] which had held

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[19] Justice O'Connor was not prepared to accept what she viewed as the plurality's "treatment of neutrality [as a] factor of singular importance" above other factors developed in the *Agostini* case. 120 S. Ct. at 2556.

[20] 521 U.S. 203 (1997), upholding a government funded program for secular special education teachers to teach in parochial schools. Writing for the Court's majority in *Agostini*, Justice O'Connor revised the much-maligned three prong test of *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

[21] For Justice O'Connor, the question of whether an aid program has the primary effect of advancing religion is determined by whether: a. the aid is actually diverted for religious indoctrination; b. the eligibility for program participation is made with regard to religion; and c. the program creates excessive administrative entanglement.

[22] Justice O'Connor's "objective observer" is not the typical person on the street, but a person "acquainted with the text, legislative history, and implementation of the statute." *Wallace v. Jaffree*, 472 U.S. 38, 76 (1985).

[23] 421 U.S. 349 (1975).

[24] 433 U.S. 229 (1977).

even the capability for (as opposed to the actual) diversion of government aid to religious purposes to be sufficient grounds to render an otherwise neutral aid program an Establishment Clause violation.[25] Finally, Justice O'Connor stressed that the aid provided under the education grant program was "secular, neutral and non-ideological," supplemented funds from private sources, and was expressly prohibited from being used for religious instruction purposes.[26]

Taking all of these precedents together, it is clearly permissible to construct a regime under which faith-based organizations may receive government social service grants. This regime is evidenced in the previously enacted charitable choice laws as well as the regulations promulgated by the Cabinet Departments. The eligibility criteria for receiving a grant are religion neutral. The grant program serves the secular purpose of providing social welfare services to needy individuals. The grant funds are expressly prohibited from being "expended for sectarian worship, instruction or proselytization." And Justice O'Connor's sophisticated "objective observer" would not believe that government support for the faith-based provider under these programs constituted the endorsement of the particular religion.

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[25] 120 S. Ct. at 2558. Justice O'Connor notes that the plurality bases its reasoning for this point on the Court's precedents that have allowed government aid to be utilized to access religious instruction, specifically *Witters v. Washington*, 474 U.S. 481 (1983), and *Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1 (1993). O'Connor correctly notes that those cases relied heavily on the "understanding that the aid was provided directly to the individual student who, in turn, made the choice of where to put that aid to use," 120 S. Ct. at 2558, as opposed to a per-capita, direct aid program at issue in *Helms*.

[26] 120 S. Ct. at 2569.

Free Exercise of Religion Considerations; For Program Beneficiaries

There are other safeguards in charitable choice laws and regulations that are not necessitated by the Establishment Clause, but by the Constitution's Free Exercise Clause – a feature of the First Amendment that ought to carry equal weight to the Establishment Clause but, for a variety of reasons, often seems forgotten – even by the Supreme Court.[27]

As members of a minority religion in this country, we in the Orthodox Jewish community are terribly sensitive to the issue of religious coercion in general, and certainly in situations where government support, albeit indirect, is involved. We believe government should bolster the "first freedom" of religious liberty at every opportunity. Thus, we would insist that there be adequate safeguards to prevent any eligible beneficiary from being religiously coerced by a government-supported service provider. We believe that a requirement that each beneficiary be entitled to a readily accessible secular alternative service program and that each beneficiary be put on specific notice that they are entitled to such an alternative is the proper method for dealing with this issue. Moreover, as a condition for receiving federal assistance, faith providers must agree not to refuse to serve an eligible beneficiary on the basis of their religion or their refusal to hold a particular religious belief. We were, therefore, disappointed that the regulations promulgated by some Cabinet agencies under this initiative did not contain safeguards to the level of strength which had been offered in the legislation derailed by

[27] The Court's current apathy toward the Free Exercise Clause began with *Employment Division v. Smith*, 474 U.S. 872 (1990), resulting in the passage of the Religious Freedom Restoration Act, 42 U.S.C. §2000bb. "RFRA" was struck down by the Court in *City of Boerne v. Flores*, 117 S.Ct. 2157 (1997) to which congress responded in 2000 with the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §2000cc.

the initiative's critics in 2001.[28] In particular, the regulations now governing the SAMSHA program[29] recognize that an entity receiving SAMSHA funds may not discriminate against an eligible recipient in the provision of service, including when a recipient refuses to participate in a religious practice. However, the regulation denotes a refusal to "actively" participate in a religious practice. This may open the door to inappropriate circumstances in which vulnerable recipients are exposed to religious practices even when they are passive. Had H.R.7 been enacted in the 107th Congress, this issue would not be of concern for the law would have contained protections against both active and passive religious participation that is unwanted.

Still, in the main, the Administration and the Cabinet Centers must be commended for developing regulations and procedures sensitive not only to what is permissible by law, but appropriate in the spirit of this enterprise and American principles of religious liberty and pluralism.

Free Exercise of Religion Considerations; For Faith-Based Providers

There are also critical religious liberty considerations with regard to the protections afforded to religious organizations by the Constitution and federal laws. As you are already aware, the one that has received considerable attention from critics of the faith-

[28] Some have suggested that allowing a beneficiary to opt out of the faith-related portions of a faith-based agency's program while being entitled to partake of the secular portions of the program is an appropriate safeguard. We believe this is insufficient. It would force beneficiaries to constantly assert their objection in contexts where that might be difficult, if not awkward. The best safeguard, in the view of the UOJCA, for the religious "objector" is to facilitate his or her participation in an acceptable alternative program as was proposed in H.R.7 §201(f)(1) of the last Congress.

[29] Issued in 2003, 42 CFR Parts 54, 54a; 45 CFR Part 96.

based initiative is the thirty-seven year old federal law,[30] embodied in the Civil Rights Act of 1964, permitting religious organizations to hire employees on the basis of religion.[31] I have attempted to address the incendiary charge of "discrimination" leveled by opponents of faith-based organizations enjoying this civil right in prior testimony to committees of this House and will not recite it again here.[32]

But I would care to raise for the Subcommittee's attention a recent development in California which brings not the promise, but the peril facing America's faith-based social welfare agencies into sharp relief should the logic of the critics' arguments win the day.

Some of you may already be aware, that on March 1st, the California Supreme Court declared Catholic Charities of California, as a matter of law, to not be a religious organization.[33] This question came before the court as a result of a state law enacted to require any employer offering prescription drug benefits in its employees' health plans to

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[30] A 2001 survey conducted by the Pew Forum on Religion and Public Life noted broad support for the faith-based initiative overall, but concerns over permitting religious social service providers to receive government funds while continuing to possess the right to hire on the basis of religion. At no point, however, was any information offered to the respondents apprising them of the limited nature of the exemption, *see below*, or its creation as part of the Civil Rights Act of 1964. *See*, http://pewforum.org/events/0410/report/topline.php3.

[31] Section 702 of the Civil Rights Act of 1964, as amended 42 U.S.C. §2000e-1, provides in relevant part: "This subchapter shall not apply...to a religious corporation, association, educational institution or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities."

[32] *See* Statement of Nathan J. Diament, Director of Public Policy, Union of Orthodox Jewish Congregations of America, Testimony Before the Subcommittee on Human Resources and Subcommittee on Select Revenue Measures of the House Committee on Ways and Means Hearing on H.R. 7, the "Community Solutions Act of 2001"June 14, 200, accessible at http://waysandmeans.house.gov/legacy.asp?file=legacy/humres/107cong/hr-6wit.htm. *See also,* Diament, *A Slander Against Our Sacred Institutions*, The Washington Post, May 28, 2001.

include coverage for prescription contraceptives. Although the legislature provided an exemption from this law to religious employers, for an entity to qualify as such, it must be a non-profit corporation which: (1) Has the inculcation of religious values as its purpose; (2) primarily employs only people of the entity's faith; and (3) serves primarily people of the entity's faith. In other words, Catholic Charities – in its homeless shelters, job training programs, soup kitchens, AIDS hospices, child care centers and countless other agencies – must only employ Catholics to serve Catholics and seek to convert its non-Catholic beneficiaries into Catholics.

Now, as stated by The New York Times' "Beliefs" columnist, it is

> noteworthy that the criteria that disqualified Catholic Charities in California from a religious exemption are precisely the ones regularly hailed by those who felt that the existing relationship between government and religious organizations was satisfactory and did not need the White House's religion-based initiative. Catholic Charities did not limit to Catholics either its hiring or its social services. It did not proselytize. And it was organized as a type of nonprofit corporation distinct from the church. This was the kind of well-tested model that critics of the religion-based initiative urged on churches that wanted to qualify for government aid to expand their activities on behalf of the needy.[34]

This characterization, however, by the Times' writer is a polite understatement, for it fails to note that these very critics who in the halls of this Congress hailed Catholic Charities as the proper paradigm for publicly funded faith-based social service filed legal briefs with the court in opposition to Catholic Charities and urging the court to rule as it has.[35]

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[33] *Catholic Charities of Sacramento, Inc. v. Superior Court of Sacramento et. al.*, March 1, 2004, accessible at http://www.courtinfo.ca.gov/opinions/documents/S099822.PDF

[34] Steinfels, *Making the Case for a Religious Exemption*, The New York Times, March 13, 2004.

[35] Americans United for Separation of Church and State, the Anti-Defamation League and the ACLU were among those filing "friend of the court" briefs against Catholic Charities. *Supra*, note 30.

The California court's ruling was, I would submit, properly characterized by the eminent constitutional law professor Douglas Laycock as "a shocking interference with church internal affairs."[36]

The fact that this ruling was advocated by the critics who have presented their objections to the legislative and regulatory steps undertaken to advance the faith-based initiative as limited and nuanced, begs the question as to what these critics' real objectives are. I would submit that, if they had their way, they would accept not only the reversal of the progress made under the current and previous Administration, but would seek to roll back long established liberties and privileges accorded America's religious institutions including tax exemptions and other legal accommodations to a degree at odds with mainstream American jurisprudence or popular consensus.[37]

Conclusion

Since the inception of "charitable choice" and the faith-based initiative, the debates associated with these efforts come down to questions of cynicism versus hope. The cynics see a slippery slope down every path; some see deeply religious people as untrustworthy – incapable of following regulations and perpetually plotting to proselytize

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[36] *Catholic Group is Told to Pay for Birth Control*, The New York Times, March 2, 2004.

[37] The next stage of this assault on longstanding and broadly accepted benefits which have been enjoyed by religious institutions is also working its way through California's courts – with the active participation critics of faith-based initiative. On March 9, 2004, an intermediate appellate court in California found the facilitation by public authorities of the issuance of tax-exempt bonds to finance facilities improvement projects at religiously affiliated schools to violate the California Constitution. *Calif. Statewide Comm. Devel. Authority v. All Persons Intersted*, 2004 WL 424166 (Cal.App. 3 Dist.).

their neighbor, while others see every civil servant as a regulator lacking restraint just waiting to emasculate America's religious institutions.

But if we set our minds -- and our hearts -- to it, we can find a way to be more hopeful. After all, what this is really about is bringing some new hope and some real help to people in need through a new avenue.

Mr. SOUDER. And as I said at the beginning, all the full statements will be inserted into the record, and if you have additional information.

Next we'll hear from Dr. Wilson Goode, senior advisor on faith-based initiatives for Public/Private Ventures. Appreciate your distinguished leadership for many years in Philadelphia and thank you for coming today.

Reverend GOODE. Good morning, Mr. Chairman and Mr. Cummings. I'm delighted to be here and to really be a part——

Mr. SOUDER. You need to tap your mic on, I think. There's a little button.

Reverend GOODE. You want me to start over again? Give me my time back.

Mr. Chairman, and Mr. Cummings, I am delighted to be here and to be a part of this distinguished panel. I have submitted a more lengthy testimony, but I will just summarize mine and not read it.

I speak in favor of faith-based initiatives. And I do so based upon 35 years of experience working with faith-based groups in order to deliver services using government funds. Thirty-five years ago, as a housing consultant working in Philadelphia, I was able to work with 50 local congregations in that city to build more than 2,000 housing units that help low- and moderate-income families to alleviate their problems.

Second, I speak as a former mayor of the fourth largest city: Philadelphia, PA. During my tenure as mayor, each year for 8 years we gave at least $40 million in contracts to local congregations and faith-based groups in order to help the homeless and the hungry, those with AIDS, and help those to build housing for low- and moderate-income families.

And, finally, in the last 3 years I have worked with a group called Public/Private Ventures and run a program called AMACHI. I went to a local prison during my first year and found a grandfather, a father, and a grandson, all in the same jail at the same time. And they met for the first time in jail. And the grandson, when I was leaving, pulled me aside and said to me, I have a son that I have not seen. And I guess I will see him for the first time in jail.

The prospect of four generations being in jail is a problem that we have faced, that we are faced with and that we try to address through the AMACHI program. The AMACHI program is a faith-based program, a performance-based program, and a program designed to find volunteers from local congregations to mentor children who have one or both parents in jail. On any given day in America, 7.3 million children have one or both parents either in jail or under some type of Federal or State supervision. Seventy percent of those young people, children, will end up in jail themselves according to a U.S. Senate report. We believed that intervening with a partnership between Big Brothers, Big Sisters, and the faith-based community was the best way to do so.

In the last 3 years, we have served more than 725 children, and from those children, two-thirds of them have seen an increase in academics, increase in their attendance at school, and a decrease in their behavior in school. We believe that faith-based organiza-

tions have every right to participate with these funds and to be provided these funds in order to begin to bring about a basic and fundamental change in the lives of these young people.

This program now is in at least 25 other cities across the country, working with faith-based organizations, working with local congregations, finding volunteers, and the reason for this is that the children are located in the zip codes where the churches are. And therefore, we want to make sure that these zip codes where these churches are and these young people are come together in order to begin to solve these problems.

Just a final comment, and that is that as I have listened to my colleagues speak on this issue, and I have listened to this for about 35 years now, and they have a good point. But I think a more fundamental point is that there are people out there every single day suffering, and the secular community has not been able to meet those needs.

I believe we need everyone, faith-based, secular, everyone else out there, working in order to try and alleviate the social illness that we find within our community. I've seen tremendous, tremendous results from this one program, and there are many others that I can talk about during the course of the questions. Thank you very much.

Mr. SOUDER. Thank you for your testimony.

[The prepared statement of Reverend Goode follows:]

Testimony of Rev. Dr. W. Wilson Goode, Sr.

Senior Advisor on Faith-Based Initiatives

Public/Private Ventures

To

The Subcommittee on Criminal Justice, Drug Policy

And Human Resources, House of Representatives

March23, 2004

I am W. Wilson Goode, Sr., Senior Advisor on Faith-Based Initiatives for Public/Private Ventures (P/PV). I come to this job after more than 40 years of active community and government service: I served for 10 years as the head of a local civic/neighborhood organization. I have also served as both Mayor and City Manager of Philadelphia. Most importantly, I have been a member of the same congregation for 50 years. So I come with a fair amount of experience
I come as someone who supports, without apology. Faith-Based Programs. I believe that allowing Faith-Based Institutions to compete with others will do much to increase the quality of services in the community.

Let me add that I know firsthand the value of faith-based institutions being allowed to compete for government contracts and services. From 1966 to 1978, I worked with 50 faith-based organizations that utilized various housing programs to construct over 2,000 housing units for low and moderate-income families. As Mayor of Philadelphia from 1984 to 1992, I allowed faith-based organizations to compete for various social service contracts. These faith-based groups received more than $40 million annually. I have now put all my experience to work in the

area of faith-based initiatives. I have done so because I believe it is the best hope for solving many of the social problems facing our urban and rural areas.

It is possible for one to look at the current situation and simply throw in the towel. It would be easy to believe that nothing is working; failures are outnumbering the successes by wide margins. Much of the investments in programs for children and youth have not yielded the kind of results expected. Government and Foundation founders have become wary of these programs. Funding has diminished and there may be those who are about to wave the white surrender flag. Well, put away that surrender flag. There are still programs worth funding. There are yet needs that must be met. There are challenges that must be confronted. Let me suggest an approach that I believe will work. Many of the problems and challenges are really centered on a very definable group of children and youth. We know that these children and youth live in poverty, are being raised in single parent households, and probably have or have had one or both parents in jail. In fact there are 7.3 million children that on any given day have one or both parents either in jail or in some form of state or federal supervision. These children and youth are not easily identifiable because we often don't collect enough information about them. Schools and other government agencies don't know whether a child has one or both parents in jail. They may know about the family composition and income but this information cannot be shared with other agencies that need it in order to be of assistance.

Let me discuss with you one program, which I believe makes the point that I am attempting to make. The program is called AMACHI. It is a program designed to find volunteer mentors for children of incarcerated parents. In AMACHI, we identified a very specific group of children. Those who have or have had a parent in

jail. We don't know nearly as much as we need to know about these children. But what we know suggests they are the most at risk population in society. According to a report issued by the U.S. Senate 70% of these children will follow their parents to jail. Yes, on any given day about 5 million children are at risk of going to jail because they had one or both parents in jail. Indeed, two-thirds of the children and youth now in juvenile detention have or have had one or both parents in jail. These children are six-times more likely than other children to be absent form school, to drop out of school, to sell drugs, to murder or be murdered.

We need to know more about these children and we need to verify by additional research the information we already have.

However, based upon what we know, we structured a program to respond to this very specific population of children and youth.

We brought together the religious and secular sectors to join forces to help these children and youth. Joining forces were Public / Private Ventures, Big Brothers Big Sisters, the Center for Religion and Urban Civil Society at the University of Pennsylvania, and fifty Local Congregations in Philadelphia.

The Local Congregations provided more than 550 volunteers who assisted more than 700 children and youth over three years. Big Brothers Big Sisters provided it's brand of community based mentoring. This program now is being replicated in at least 100 cities and 37 states around the country.

What's new about this program is not only its focus, but also the partnerships that seek to build on the strengths of the respective organizations. The local congregations have been and are untapped resources to confront the many

challenges facing neighborhoods and communities across the country. Moreover, these congregations are willing to partner with other viable organizations to help alleviate the problems of children and youth in their own neighborhoods.

The AMACHI Program is a very focused program. It does not seek to deal with all the problems facing these children and youth. It is a mentoring program that asks a volunteer to spend at least one hour, once per week for at least one year with a child of an incarcerated parent. We know from research that mentoring is a proven tool of intervention. We believe that targeting this group of children and youth can change neighborhoods and communities across the country.

What I am really suggesting here is more targeting of dollars to specific population of children and youth. If we target and add performance measures along with outcome expectations, there is no reason we cannot make significant changes in the problems.

Amachi is a straightforward and highly focused program: through a partnership of secular and faith-based institutions, volunteers recruited from congregations mentor children of prisoners. The model was developed from research findings on the benefits of mentoring and the potential of inner-city congregations to address some of the significant challenges facing their communities—including findings about both practices that work and those that are less likely to be successful.

Research on mentoring has shown that positive outcomes occur only when matches meet regularly for at least a year and that solid program infrastructure is necessary for this to occur. Strong mentoring relationships do not happen automatically. Well-planned, well-run programs—programs that carefully screen,

train, monitor, and support mentors so the matches are able to develop and endure—have positive effects. However, poorly implemented mentoring programs are less likely to produce such benefits.[i]

Similarly, while inner-city congregations are potentially vital sources of volunteers who can help bring about positive changes in their communities, their involvement will not happen automatically. Members of those congregations respond to the leadership of their pastors. If the leadership is passive concerning community involvement, the congregation will be passive as well. However, if the leadership is committed—if it sees the issue being addressed as meaningful and directly connected to the church's mission, and conveys that message to the congregation—members will respond.[ii]

THE MODEL

Drawing on research on effective practices, the Amachi model was intended to engage congregations, take advantage of each partner's strengths, and lead to large numbers of successful mentoring relationships. The model included clearly defined roles and responsibilities for the partners; a staffing configuration that supported each partner and contributed to the goals of the overall partnership; and a data-collection system for monitoring the matches and ensuring accountability.

The Partners

The Amachi model required an organization to implement and oversee the project. In Philadelphia, P/PV took that role. It was responsible for administrative oversight and financial management, as well as for recruiting congregations and

children. The organization also collected and analyzed the data used to monitor the matches and gauge the overall progress of Amachi, and worked with the key partners to address the inevitable problems that arise during start-up of a new project. Those partners were the congregations and Big Brothers Big Sisters.

The Congregations

Congregations are partners in Amachi, not just sources of volunteers. The presence of Amachi in a church reflects the pastor and congregation's conviction that the project is very much a part of their mission in the world.

Each participating church committed to recruiting ten volunteers from its congregation, who would meet at least one hour a week for a year with a child of a current or former prisoner. Each church was also responsible for collecting and submitting monthly data on how often those matches were meeting. Beyond that, however, congregations were expected to nurture and support the volunteers, and to step in if they were not meeting their commitment. To that end, each pastor named a Church Volunteer Coordinator (CVC), who was responsible for overseeing and coordinating Amachi within the congregation. Many of the CVCs had previously served as a volunteer youth director or in a similar role at the church. They generally checked with mentors on a weekly basis, either through regularly scheduled meetings, phone calls, or informal conversations after Sunday. Mentoring children of prisoner programs are now in 37 states and 105 cities. About one-third are called AMACHI. The AMACHI Model has influenced all.

It is clear to me that Faith-Based programs are a vital part of solving the social ills facing many communities. I commend to you this vital resource.

[i] Cynthia L. Sipe. 1996. *Mentoring: A Synthesis of P/PV's Research: 1988-1995*. Philadelphia: Public/Private Ventures.

[ii] Rev. W. Wilson Goode, Sr. *From Clubhouse To Lighthouse: A Dialogical Approach To Congregational Transformation*. May 2000, Doctoral Dissertation. Eastern Baptist Theological Seminary.

Mr. SOUDER. Our next witness is Mr. Steve Fitzhugh, director of the House.

Mr. FITZHUGH. Good morning. It's been nearly 5 years since we first opened the House. I can recall the motivation. I still sense it and feel it every day as I drive through southeast Washington, DC. As a national youth communicator, I have been in front of over a million teenagers in America and abroad, while as a co-founding president of the House I serve some of the most at-risk of these teens in one of our countries most underserved communities: Anacostia, southeast Washington, DC. In fact, the risk factors are many. The poverty level is high and the violence is always threatening.

The question became: How do we reach and impact the unreachable? I have a colleague, Darrell Green, who does it but he targets primarily elementary students. Another colleague and partner, Art Monk, he does it; but his students must have a certain grade point average to qualify.

Who will provide a haven, a safe haven where any high school student can come? The House began as that entity. We are a place where any high school student can come and we'll say, you are welcome. The House is a surrogate home in the community where 80 percent of the families are headed by a single mom. It is a place not only for unconditional love and nurturing, but also a place for life direction and purpose.

In my constant struggle to fund this project, a grant writer once suggested that we remove certain barriers to funding, specifically our ardent faith-based posture. She continued to inquire as to why we have chosen not to amend our vision so we can enjoy more funding. I found myself digging deep for the answer, which became so plain in time. We are faith-based because we have discovered that it is not merely a new program or a new curriculum students need most, but a new heart. We are hope merchants. We restore dreams and invoke destiny.

Just ask Nina. Nina became so distraught, never met her father till she was in high school. Her mom still struggles with substance use and abuse. She was held back a grade in high school. She had one brother murdered in the 10th grade, another brother murdered in the 11th grade. But 1 day this wounded heart came into the House. She encountered the House. And that's what the House is, an encounter. There's a computer lab, a weight room, a fitness center, state-of-the-art recording studio, and dinner is served every night. Our philosophy is simple: Create a moment for life change and God can change any life in a moment. Nina changed. She went to night school, caught up with her class, and last June she cried when she walked from one edge of that stage to the other and accepted her high school diploma.

Jason, by his own confession, his entire family is drug dealers and murderers. Five years ago he was caught up in a game. His goal was to have sex with a different virgin every day. Upon hearing him speak today of his values and goals and responsibilities as a father, you could never imagine the conversation I had when I initially met Jason before he encountered a faith-based program called the House.

There are others with similar stories, like Tabitha, Dominick, Donnell, and Ruby. I had that story, too. I saw my mother die of cancer. She was a chain smoker. My oldest brother, my hero, well he died of cocaine abuse. I have a sister who abused drugs and is now an invalid at 48. I have yet another brother who struggles today with alcohol and chemical culture, all of these things that so often ensnare young black men.

But how did I escape? How did I get the full scholarship to college? How did I end up in the NFL? How did I get the wife and family I have today and the knowledge of what it takes to be a man? I had an encounter with God. I discovered my purpose and my reason for being, and it changed my life.

Students don't care how much you know until they know how much you care, and at the House we care. And so I brought with me today one of our students, the hardest of the hard for us to reach. Nobody would ever touch this guy. His name is Mike. I brought him with me in memory through something I wrote about him called "Destiny." If Mike had just 2 minutes to share with you, this is what Mike would say:

I can't hardly see the light of day. Misery stay in my way. Still I dreamed to be free, like them boys on my TV. But every day is just the same. I got nothing but pain on top of pain. I can't escape this hopeless dream. I open my mouth but cannot scream, so here I am, me and my crew, not knowing what we ought to do. The street's our only road. No other life to use we told.

Poverty ain't nothing new. That's all I knew since I was two. Mom's did the best she could struggling down here in the 'hood. I'm steady hating that deadbeat dad. Disappointment's all I had. I gotta face the dreadful fact my daddy's never coming back.

Now I gotta be a man all on my own, yet they don't want me acting grown. Street soldiers popping is that glock, young 'uns dying up on my block. I'm scared to close my eyes tonight cuz I'm feeling like something just ain't right. Still I'm trying to speak my heart. Too bad your fear keeps us apart. I can't believe it till I hear it. I can't hear it till you tell it.

If the truth is what you preach, why don't you help this brother reach my destiny? Cuz I reminisce about all these scars. It's like I'm in prison, they my bars. I'm locked away from the joys of life. Am I destined for streets and strife? Am I ever gon' win a wife. Ever gon' have the pain-free life, ever gon' travel around the world? Will I get another chance to raise my girl? Will I ever sleep without this hunger?

Makes me wonder, makes me wonder why I live in so much pain. Will I lose my mind, will I go insane? And when I hear the final bell, will it be heaven, will it be hell? Will I die when I'm in my prime? Can I ever renew my mind? Is there a God that can forgive all the wickedness I did, because I can't forgive my thuggish self?

Got too much pride to cry for help. Facts too hard for me to admit, if it don't fit you must acquit. But if my record is true and right, I ought to be serving double life. They should have throwed away the jailhouse key for the sins locked up inside of me. No solution for my drama, I'm too old to run to mama. I want to change, but how? Do I pray it? How many times I gotta say it? You got sight, why can't you see it? Without you, will I ever achieve it? My destiny.

So I choose to go on. Gotta survive, gotta stay strong. How many times I said that's it. How many times I wanted to quit. Like when Shorty broke my heart. I was true blue right from the start. Why me, I had to plead. Gave love a chance and still I bleed. Regret I wasted time. True that all the blame was mine.

They tell me today's another day. They say it's not too late to change. They say I can still redeem my life. They say there's a way to walk upright. But when I close my eyes real tight, I'm still seeing demons in the night.

I'm ready to pay about any price just to get some peace back in my life. Like the time when we was young, me and my homies, just having fun. Sometimes I wanna go back when. Sometimes I wanna just start again. No more thug life under them street lights. No more sadness, no more sin.

Wish you could help me find my way, 'cuz I'm living in fear of Judgment Day. Even the clock's my enemy, 'cuz everybody dying look just like me. It's like my grip

is about to slip. It's like I'm down to my last clip. Darkened shadows, but they was mine. Don't let me die before I find my destiny.

Mike was the one that got away. He was murdered 3 days before his 19th birthday. I never got to recite that poem to him that I wrote about him. Those who are closest to the water have the greatest sense of urgency for the need for a bigger boat. That's what they said in Jaws, "We need a bigger boat." We need funding, we need resources, we need tools to touch lives. Thank you.

Mr. SOUDER. Thank you very much for your testimony and your passion.

Doctor Amy Sherman has arrived. I need to swear you in as I did the earlier witnesses. If you'll stand and raise your right hand.

[Witness sworn.]

Mr. SOUDER. Let the record show that she responded in the affirmative. Doctor Amy Sherman is director of the Hudson Institute Faith-in-Communities Program.

STATEMENT OF DR. AMY SHERMAN, DIRECTOR, HUDSON INSTITUTE FAITH-IN-COMMUNITIES PROGRAM

Ms. SHERMAN. I have been asked today to provide some general observations from the front lines about the impact of the faith-based community initiative, and with a couple of background remarks I will begin.

As has probably already been said, the initiative's ultimate objective is to ensure that the disadvantaged receive the best services. And it seeks to accomplish this through three principal means: eliminating barriers in procurements policies; creating a level playing field for faith-based and community organizations to compete on equal terms with secular groups; and better using and empowering and collaborating with grassroots and faith-based organizations. And the centers of the various Federal Cabinet departments play key roles in advancing those objectives.

I think at least three key questions could be asked to help us assess whether they've done a good job. The first is, has the initiative stimulated Federal administrative reform to knock down barriers? Answer, yes. The Cabinet centers have been engines of administrative reform. They have reviewed departmental policies and identified barriers and proposed new regulations. Thus far, four agency rules have been enacted and eight new ones are awaiting finalization.

Second assessment question: Has the initiative led to increased funding of faith-based groups or new special projects? Answer, yes. You can read the details in my written testimony.

Third. Has the initiative influenced State and local policies toward faith-based groups? I think this is important. If the vast majority of Federal social spending unfolds through block and formula grants to States and localities, then the full promise of the faith-based initiative can't be reached unless change occurs at the State and local levels. So has it. And overall I would say that we have seen an encouraging amount of change, but more progress is needed.

At the Hudson Institute we have conducted a couple of studies that indicate that State and local governments do increasingly appear to be contracting with faith-based organizations. Also a major

study by the Rockefeller Institute has identified 11 different ways that States are engaged in reconstituting their relationships with faith-based providers. And 50 percent of the States for which data was available to the Rockefeller researchers had engaged in at least 3 of those 11 types of activities. They also concluded that more demonstrable activity has occurred in the States since 2001 than had following the passage of the charitable choice rules in 1996, which suggests that the administration's efforts have indeed enjoyed a degree of success in influencing State action. I think it is also notable that 19 States and 180 mayors have established faith-based offices.

Let me conclude by mentioning several practical consequences of the faith-based initiative "on the ground" that I think are relevant any assessment of the initiative.

The first is that clients have more options. Since faith-based organizations that previously had no history of government contracting are now serving as service providers, there is a broader network in place. It also means that people of faith can now turn to faith-based organizations that share that faith to receive services.

Second, the initiative might lead to an increase in the quantity of social service programs, for example, as a result of the activities underway through the Compassion Capital Fund.

Third, government funding of faith-based organizations has sometimes had the positive benefit of better connecting faith-based groups to the broader network of social service providers. In that way faith-based groups gain knowledge of additional resources in the community and that enables them to better serve their own clients.

Fourth, increased participation by faith-based organizations in public funded social service programs has led to the mobilization of previously untapped human resources, which I think Mayor Goode was referring to. Public officials around the country are discovering that collaboration with the faith sector is helping them to provide more affordable housing, move more people from welfare to work, and decrease youth violence.

Fifth, faith-based groups are in some instances serving as credible portals into needy immigrant communities and ethnic communities that government agencies desire to reach but don't always know how to reach.

And finally, increased government and faith-based collaboration on the ground brings faith leaders and public officials into new relationships, fostering greater trust and dialog. That can be very important when potentially explosive issues like police brutality erupt.

In short, I'd say that these new relationships fostered through the faith-based initiative are strengthening social capital in local communities around the country. Thank you.

[The prepared statement of Ms. Sherman follows:]

Written Testimony of Amy L. Sherman, Ph.D.
Senior Fellow, Hudson Institute

For the U.S. House of Representatives, Subcommittee on Criminal Justice, Drug Policy, and Human Resources' Hearing on "The Centers for Faith-Based and Community Initiatives: Progress and Promise"

March 23, 2004

Written Testimony of Amy L. Sherman, Ph.D., Senior Fellow, Hudson Institute
For the U.S. House of Representatives, Subcommittee on Criminal Justice, Drug Policy, and Human Resources' Hearing on "The Centers for Faith-Based and Community Initiatives: Progress and Promise"
March 23, 2004

I. Introduction

President Bush's "faith-based and community initiative," which has garnered significant attention on Capital Hill and in the media, is driven by three main objectives. Through the White House Office of Faith-Based and Community Initiatives (WHOFBCI), as well as the cabinet-level Centers for Faith-Based and Community Initiatives the administration has established, the project seeks to: (1) identify and dismantle barriers in federal policy faced by faith-based and small, community based social service organizations; (2) create a level playing for such organizations to compete on equal terms with secular agencies for government funds; and (3) "better use, empower, and collaborate" with grassroots and faith-based organizations (FBOs). The initiative's ultimate aim is to deliver the best possible social services for the disadvantaged. Toward these ends, the President has issued executive orders to review and reform departmental policies and regulations so that the equal treatment standard will apply to faith-based and secular groups; sponsored legislation to level the playing field for all service organizations to have equal opportunity to compete for federal funds underwriting a range of social services; and engaged in a variety of educational/outreach efforts to inform and equip faith-based providers, so as to facilitate their collaboration with government entities in social service provision.

II. What's New about the Faith-Based and Community Initiative?

U.S. history is replete with examples of government-FBO collaboration in social services. What, then, is new or different about the administration's faith-based initiative?

Put simply, what is new is a deliberate attempt to create a fairer, more hospitable climate for such collaboration by reforming policies that either shut FBOs out from competition for government funds or impose conditions on the receipt of funds that have the effect of marginalizing the FBO's religious character. This is being done through efforts to expand the charitable choice provisions and by administrative reforms in the federal cabinet agencies. In addition, today, FBOs and grassroots community based organizations (CBOs) are being more energetically welcomed into potential collaborations as government entities make more deliberate efforts to inform such groups of the opportunities for funding.

The various cabinet Centers for Faith-Based and Community Initiatives are playing a critical role in these efforts. First, they are, in the words of one former WHOFBCI staffer, the "engines of administrative reform." The Centers have been reviewing departmental policies and regulations, identifying barriers, and proposing new regulations. Thus far, four new agency rules have been enacted to remove the barriers for participation by FBOs in certain government programs. At the Department of Housing and Urban Development (HUD), for example, a new rule says that no group of applicants competing for HUD funds should be subject to greater or

fewer requirements than other groups solely because of their religious character or affiliation. This rule also permits "primarily religious organizations" to participate in the HOME program. At the department of Health and Human Services (HHS), three new rules implement the charitable choice provisions in the Community Services Block Grant program, the Temporary Assistance to Needy Families program, and the Substance Abuse Prevention and Treatment Block Grant program. Additional new agency rules have been proposed but not adopted at other federal departments. The Department of Labor is seeking to amend certain provisions in the Workforce Investment Act to allow FBOs to participate in the "vouchered" job training system. The Department of Education has proposed rules to amend its General Administrative Regulations in order to clarify that FBOs are eligible to participate in programs on the same basis as any other private organization. Similarly, Centers at the Department of Justice, the Department of Agriculture, and the Department of Veterans Affairs are proposing rule changes to ensure that their programs permit competition by faith-based groups on an equal footing with all other competitors.

Second, the cabinet Centers are heavily involved in the tasks of educating FBOs and CBOs about the opportunities for federal funding and reaching out to such groups to offer basic technical assistance regarding the applications process. The Department of Education's faith-based center, for example, has sponsored numerous regional workshops, created a toolkit for organizations interested in applying for funding, and produced a Webcast intended to help FBOs and grassroots organizations to apply to become approved providers of supplemental services (i.e., organizations that provide tutoring under the "No Child Left Behind" act). Each of the Centers have created informative websites; some of these highlight those grant and contracting opportunities most well-suited to the participation of smaller organizations.

Third, the various Centers have sponsored and overseen new initiatives—such as the Compassion Capital Fund at HHS and the Ready4Work initiative at Labor—that facilitate strategic partnerships with faith-based and community organizations to enhance their work among the poor. (More information on specific initiatives follows below.)

III. How Should we Judge the Impact of these Efforts thus Far? Answers to Key Assessment Questions

The media's focus on the faith-based initiative has emphasized its legislative fortunes on Capital Hill. This is the arena in which the least progress has been made. The administration failed to expand the charitable choice provisions to additional federal programs through the H.R. 7 bill. It has been more successful in winning congressional support for the CARE Act, which aims to increase private charitable giving to social service nonprofits of all types; nonetheless, political opposition thus far has kept this bill from being finalized in conference.

Judging the initiative's impact solely by what has, or has not, been accomplished legislatively is a mistake. Important changes, have, as already noted, occurred in Washington. The many new administrative reforms help create a climate in which FBOs have equal opportunity to serve in federally supported programs. The real story of the faith-based initiative, though, lies largely outside the Beltway. Other questions than the question of the initiative's

legislative fortunes are necessary to raise in order to obtain a full appreciation and understanding of the initiative's impact. Four key assessment questions are discussed below.

1) Has the initiative stimulated federal administrative reform to knock down barriers? The answer here, as discussed above, is yes. Some new rules are already in effect; others are in development. And beyond rule changes, changes have been made in the language of RFPs (Requests for Proposals) to clarify the eligibility of FBOs and CBOs and agencies sponsoring grant review committees have more deliberately sought out reviewers with expertise in the faith-based social service sector.

2) Has the initiative led to new projects and/or increased funding of FBOs by the federal departments housing Centers for FBCI? Here again, the answer is yes. In March, 2004, the WHOFBCI released data showing that funding of FBOs by HHS had increased 41 percent from fiscal year 2002 to 2003; at HUD, the increase was 16 percent. Similarly, the Department of Education increased its funding of FBOs: in January 2003, two percent of the providers of tutoring services under the No Child Left Behind program were faith-based but by December 2003, that had increased to nine percent.

Moreover, the faith-based Centers at the various federal departments have launched a variety of new initiatives involving FBOs. The Department of Labor's "Ready4Work" project is a three-year, $22.5 million effort to assist faith-based and community programs that provide mentoring and other transition services for men and women returning from prison. The Department of Agriculture's Center for FBCI sponsored a one-time special program in which FBOs and community organizations received nearly 400 million pounds of non-fat dry milk to distribute to individuals and families in need. HUD's Center is piloting the "Reaching the Dream" program that involves FBOs in promoting home ownership among low-income residents in three cities. HUD also now boasts 83 regional faith community liaisons across the nation. HHS has been the most active. It has overseen the Compassion Capital Fund, by which 31 intermediary organizations have received millions in federal dollars to (a) provide technical assistance and capacity building services for grassroots FBOs and community based organizations and (b) underwrite special mini-grant programs providing resources to such groups for their social service programs. Intermediaries funded through the Compassion Capital Fund, such as the United Way of Massachusetts Bay, provide technical assistance for FBOs and CBOs that strengthens their ability to seek funding from both public agencies and private foundations.

3) Has the initiative influenced state/local policies towards FBOs? The vast majority of federal social spending unfolds through block and formula grants to states and localities. Thus, the White House's efforts to "empower" and "collaborate" with FBOs and grassroots groups will flounder if the initiative fails to influence state and local policies towards FBOs. Put differently, for the full promise of the faith-based initiative to be reached, change has to occur at state and local levels. What can be determined thus far about the impact of the federal initiative on states and localities? The most accurate, overall assessment can be summarized this way: an encouraging amount of change has transpired, but more progress is needed.

Three main research studies have examined this issue; unfortunately, information from one of them (sponsored by HHS and being implemented by Mathematica Policy Research

Corporation) is not yet publicly available. The other two studies are those conducted by the Hudson Institute (in cooperation with the Center for Public Justice) and Rockefeller Institute's "Roundtable on Religion and Social Welfare Policy."

Hudson/CPJ have been tracking the implementation of charitable choice since 1998, interviewing both state/local government officials and faith community representatives in a variety of states. The results of these two studies[1] suggest that state and local governments are increasingly contracting with faith-based organizations to provide social services. In 2000, in nine selected states, 84 FBO contracts were identified totaling $7.6 million; this grew to 485 contracts totaling $88.4 million by 2002. Interviews with public administrators throughout the course of the research for these two studies indicated that often, the charitable choice rules and, later, the Bush administration's championing of equal treatment for FBOs, served as a "green light" for exploring new partnership possibilities. Officials previously uncertain about, or skeptical of, the legitimacy of close collaboration with religious social service providers were reassured by the new legislation and the new federal climate. Special, new initiatives by government agencies to reach out to the faith community sometimes followed: several states and a number of counties hosted conferences gathering FBO representatives to discuss collaboration on behalf of the needy.

In late 2002, the Hudson Institute and the Bliss Institute conducted a survey of nearly 400 faith-based contractors with government. The study indicated that over half of these contractors were new to formal collaboration with government, having only been recipients of government dollars since the passage of the charitable choice regulations. In a number of cases, the faith leaders reported, local government officials had invited their participation in competitions for funding. In short, outreach efforts by local government agencies, combined with the more faith-friendly climate created by charitable choice, appeared to have played some role in stimulating the participation of FBOs with no previous history of formal, financial collaboration with government.

The Rockefeller Institute has sponsored a nation-wide study examining the "nature and extent of state initiatives to increase the involvement of faith-based organizations in the delivery of social services."[2] They collected usable data on 36 states. The study aimed to "determine the extent to which federal initiatives have altered the landscape of social services delivery throughout the United States."[3]

The study identified eleven different ways in which states were engaged in reconstituting their relationships with faith-based social service providers. Table 1 (below) summarizes the extent to which the states were involved in these different kinds of activities. These included outreach efforts (such as sponsoring workshops or conferences to inform FBOs of funding opportunities); inviting representatives from the faith community to serve on welfare-reform

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[1] Amy L. Sherman, *The Growing Impact of Charitable Choice: A Catalogue of New Collaborations Between Government and Faith-Based Organizations in Nine States* (Center for Public Justice, 2000) and Sherman, *Collaborations Catalogue: A Report on Charitable Choice Implementation in 15 States* (Hudson Institute, 2002).
[2] *Scanning the Policy Environment for Faith-Based Social Services in the United States: Results of a 50-State Study*, The Roundtable on Religion and Social Welfare Policy (Rockefeller Institute, 2003).
[3] Ibid.

committees or task forces; recruiting FBOs for a particular type of service such as welfare-to-work mentoring; establishing a "faith community liaison" staff position or office; changing the contracting process or rules to eliminate barriers to FBO participation or facilitate the involvement of FBOs and/or small, grassroots groups; encouraging government contractors to subcontract with FBOs; inviting or recruiting FBOs to join service contract lists; reforming the processes by which private organizations are informed about potential funding opportunities (so as to ensure that FBOs receive such notifications); providing grants to help build capacity among FBOs and/or help them to launch new programs; and providing technical assistance.

Table 1.

ACTIVITY	% OF STATES
Outreach efforts	65.9
Faith representative on welfare advisory committee	53.8
Recruit FBOs for a particular service	29.3
Liaison	47.7
Modified contracting process	9.8
Scaled down contracts	4.9
Encourage contractors to subcontract to FBOs	21.4
Recruit/invite FBOs to join service contract lists	40.5
Changed RFP notification process	23.8
Provided capacity-building/start-up grants	4.7
Provided technical assistance	32.6

Source: *Scanning the Policy Environment for Faith-Based Social Services in the United States: Results of a 50-State Study*, The Roundtable on Religion and Social Welfare Policy (Rockefeller Institute, 2003). Note that data was not available from all 50 states for each of the indicators. The percentages shown are based on the number of states reporting data for each indicator.

Overall, 50 percent of the states for which data was available to Rockefeller's researchers had engaged in at least three of these types of activities. In addition, researchers concluded that more demonstrable activity had occurred in the states since 2001 than had following the passage of charitable choice in 1996--suggesting that the administration's efforts have enjoyed at least a degree of success in influencing state action.

Nineteen states have come to consider the issue of equal treatment of FBOs and CBOs important enough to warrant the establishment of state "faith-based offices." These offices often act much like the federal Centers: they consider administrative reforms, engage in deliberate outreach and training efforts, and sponsor special projects engaging FBOs, such as Illinois' Front Door initiative.

There is evidence, too, that the faith-based initiative at the federal level has also helped to spur new initiatives at the city level. 180 mayors have established faith-based offices. Many creative programs to engage FBOs and CBOs more effectively in such service arenas as youth mentoring and affordable housing have been launched by mayors in cities such as Nashville, Baltimore, and Charlotte. At its recent annual Winter Meeting, the U.S. Conference of Mayors

established a new Mayors Center for Faith-Based and Community Initiatives to inform, educate, and train mayors and city-designated faith community liaisons on how best to engage the faith community in effective service partnerships.

4) Has the initiative affected how non-governmental sectors in the society think about the role of FBOs in social service delivery? If influence on state policy represents the first ring of ripple effects of the faith-based initiative, then influence on nongovernmental sectors—such as the academy, private philanthropy, and the corporate world—demarcate the next rings. Here, too, noticeable changes are evident. In the past few years, there has been an explosion in academic research on questions revolving around faith-based social service. The Roundtable on Religion and Social Welfare Policy, for example, conducted a comprehensive literature review of academic studies on this topic.[4] Out of 136 studies found, two-thirds were published since 2000. FBOs are enjoying increased attention within the philanthropic community as well. Recent conferences of the Philanthropy Roundtable, the Council on Foundations' annual community foundations conference, and The Gathering have sponsored special panels and seminars on FBOs. In addition, several local foundations—for example, the Skillman Foundation in Detroit, the Cleveland Foundation, the Santa Barbara Foundation in California—have launched new, special initiatives to partner with FBOs and congregations to meet community needs. The Pew Charitable Trusts have invested $6 million in FASTEN (the Faith and Service Technical Education Network) to build capacity among faith-based social service organizations working in distressed urban communities. The business sector has been the slowest to react to the federal faith-based initiative, but a few examples of change can be noted. In Orlando, Florida, the Chamber of Commerce launched an ambitious initiative to fund The Jobs Partnership program, through which businesses and churches partner to provide job training and job placement for un- and under-employed individuals. CVS Corporation has piloted a partnership with the Washington Interfaith Network in the nation's capital to provide job opportunities in pharmacology careers.

IV. Are Faith-based Programs Effective?

In light of the attention focused on the faith-based initiative, many observers are hungry for hard data on the effectiveness of faith-based programs. Few studies have been completed thus far (similarly few studies have examined the effectiveness of secular programs funded by government). The most recent have indicated that FBOs do better than secular programs on certain measures and worse on others.[5] No firm conclusions are yet available given the insufficient numbers of formal investigations.

The Center for Research on Religion and Urban Civil Society (CRRUCS) at the University of Pennsylvania has been a leading organization conducting empirical studies on the

[4] Jason D. Scott, "The Scope and Scale of Activities Carried Out by Faith-Based Organizations: A Review of the Literature, 2nd Edition," (The Roundtable on Religion and Social Welfare Policy, 2003).
[5] Steven V. Monsma and J. Christopher Soper, "What Works? Comparing the Effectiveness of Welfare-to-Work Programs in Los Angeles," (Center for Research on Religion and Urban Civil Society, 2003). Also, an analysis by the Charitable Choice project at Indiana University-Purdue University Indianapolis of a small number of welfare-to-work programs showed the faith-based ones about equal to secular programs on some outcome measures and a bit lagging on others.

effectiveness of faith-based programs.[6] Associate Director Byron Johnson's report *Objective Hope: Assessing the Effectiveness of Faith-Based Organizations* provides the most comprehensive literature review of studies examining the efficacy of FBOs available.[7] In addition, CRRUCS has published several important studies of its own on the topic in the past two years. One examines the role played by African-American churches in reducing deviance among inner-city youth and concludes that "involvement of African-American youth in religious institutions significantly buffers or interacts with the effects of neighborhood disorder on crime, particularly serious crime."[8] In layman's language, black kids who live in dysfunctional neighborhoods are less likely to get involved in crime if they go to church. Another CRRUCS study examined the influence of religious engagement on inner-city youth's school performance, and found that religious involvement aids the resiliency of such teens. That is, involvement by inner-city adolescents in churches is much more likely to contribute positively to their academic progress than is involvement in religious activities by wealthier suburban kids. Attending church, the researcher found, helps teens to stay on track in school and assists them in improving their educational status.[9]

Other recent studies have illuminated some intriguing findings about the value of FBOs. Researchers with the Roundtable on Religion and Social Welfare Policy have discovered that FBOs, more than other types of service agencies, worked with needy participants for longer periods of time. This held true for services in all four areas the researchers examined: parenting education, substance abuse recovery, transitional housing, and workforce development.[10] A study comparing faith-based and secular job training programs in Los Angeles indicated a similar finding: FBOs had more contact than did the secular providers with their clients six and twelve months after those clients finished their programs.[11] And a study by Robert Wuthnow and colleagues from Princeton University found that clients' "evaluations of the effectiveness and trustworthiness of their portfolio of service organizations are lower when they have sought assistance from public welfare agencies and higher when they have sought assistance from congregations."[12]

Doubtless, the effectiveness question is important. It is worth noting, though, that the deeper challenge for funders—whether public or private—is in knowing how to assess the

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[6] The name of this initiative was recently changed to the Program for Research on Religion and Urban Civil Society (PRRUCS).

[7] Bryon R. Johnson, Ralph Brett Tompkins and Derek Webb, "Objective Hope: Assessing the Effectiveness of Faith-Based Organizations, A Review of the Literature," (Philadelphia, PA: Center for Research on Religion and Urban Civil Society, 2002).

[8] Johnson, "The Role of African-American Churches in Reducing Crime Among Black Youth," (CRRUCS Report 2001-2).

[9] Mark D. Regnerus, "Making the Grade: The Influence of Religion Upon the Academic Performance of Youth in Disadvantaged Communities" (CCRUCS Report 2001-3).

[10] See the transcript, "The Public Benefit of Private Faith: Religious Organizations and the Delivery of Social Services," a plenary discussion presented at The Roundtable on Religion and Social Welfare Policy's Fall Research Conference, Washington, DC, November 13-13, 2003, for details.

[11] Monsma and Soper, (2003).

[12] Robert Wuthnow, Conrad Hackett, and Becky Yang Hsu, "The Effectiveness and Trustworthiness of Faith-Based and Other Service Organizations: A Study of Recipients' Perceptions," paper prepared for the Spring Research Conference of the Roundtable on Religion and Social Welfare Policy and Independent Sector, Washington ,DC, March 6-7, 2003.

effectiveness of individual applicants. Aggregate findings about the effectiveness of FBOs or CBOs in general do not provide guidance about specific individual organizations: FBOs in general could be found to be effective in this or that service arena but an individual FBO active in that field may not be effective--and vice versa. What has been helpful about the faith-based initiative is that (a) increased attention is being given to evaluation issues and (b) the "leveling the playing field" type activities of federal agencies and state governments are giving all programs—faith-based as well as secular--the chance to be considered. Only when *all* can enter the competition can the most effective programs be identified.

V. Conclusion: The Effects of the Faith-Based Initiative "On the Ground"

The ultimate aim of the faith-based initiative, as noted earlier, is to improve social services for the poor. Part of the philosophy behind the initiative is that groups—of whatever stripe—that deliver the best results at the best price should be the primary channels through which government implements its social welfare programs. Free and equal competition among social service providers is needed to help ensure that the most effective programs are the ones funded. The faith-based and community initiative seeks to create that level playing field for all to compete, whether (in the President's words) they are "Methodist, Mormon, Muslim or good people of no faith at all."

One consequence of the initiative, thus far, is that in some instances, beneficiaries of needed social services have expanded options available to them. As noted earlier, FBOs that previously had no history of government funding are now serving as contractors providing social services underwritten by tax dollars. With this broader network of providers in place, clients have more choices. And, since many poor people are people of faith, some clients are now enjoying the opportunity to receive public services delivered by organizations with which they feel a special affinity, given their shared faith commitments.

Moreover, with some of the FBOs that have received government funding for the first time, the dollars are underwriting initiatives (for example, mentoring) that engage the FBOs in longer-term, more holistic, relational programs. When these FBOs have served their communities previously by short-term, commodity-based programs (e.g., distributing emergency food or cash), their collaboration with government has helped them to deepen their investment in low-income families. This is positive for families in need, who receive more comprehensive services. And it can be positive for the volunteers participating in such initiatives, as some bridge racial, cultural, and class divides to serve their neighbors.

The initiative also holds promise for increasing the quantity of social service programs. The Compassion Capital Fund (CCF), with its emphasis on building capacity in small, community based and faith-based nonprofits, can contribute to an enhancement of the scope, scale, and effectiveness of these groups. This has obvious positive benefits for families and individuals in need, who now may be able to receive more and/or better help.

Faith-based intermediary organizations such as Nueva Esperanza in Philadelphia, The Compassion Coalition in Knoxville, and the Christian Reformed World Relief Committee's

North American ministries office in Michigan report being swamped with requests from faith leaders for training and advice on establishing new community serving programs. Ethnic faith leaders, including Hyepin Im of Korean Churches for Community Development and Ray Rivera of the Latino Pastoral Action Center, report that their faith communities are increasingly embracing a theology emphasizing community outreach and social services. Luis Cortes of Nueva Esperanza says the faith-based initiative has "lit a fuse to a powder keg," stimulating tremendous interest among Hispanic pastors, but worries that his group and others who provide training are "not ready to deal with the explosion."[13] For all these reasons, increased investment in intermediary organizations—what the CCF champions—is a needed and strategic approach for expanding faith-based social service delivery.

On the ground, government funding of FBOs has sometimes also had the positive benefit of better connecting the FBOs to the broader network of service providers in the community. Less isolated, these FBOs gain knowledge of additional resources and programs occurring in the community, enabling them to better serve their own clients (whom they can refer to other agencies for assistance that they cannot themselves offer).

Increased participation by FBOs in public-funded social service programs can also lead to the mobilization of previously untapped human resources, and collaboration with FBOs can stretch public dollars.[14] In Nashville, Mayor Purcell tackled the city's affordable housing crisis with help from the faith community. The city offered FBOs $3000 worth of building materials if they would provide the labor needed to renovate houses. Over 5,500 homes have been rehabbed by faith community volunteers since 1999.[15] In Holland, Michigan, an FBO called Good Samaritan Ministries received a $99,000 contract from the local welfare agency to provide mentoring and supportive services to county residents making the transition from welfare to work. "Good Sam" was able to mobilize over fifty congregations in six months to supply friendly volunteers who could come alongside these low-income residents and encourage them in their transition into the workplace. In Miami, one very practical consequence of Mayor Diaz' faith-based initiative is that FBOs were recruited to educate low-income parishioners about the Earned Income Tax Credit. As a result, EITC payments increased by $42 million to city residents, an infusion of cash with positive benefits for the local economy. According to former Indianapolis Mayor Steven Goldsmith, mayors are also finding that collaboration with faith communities is helping to decrease youth violence (through mentoring programs connecting church volunteers with at-risk youth) and increase youth services (when churches provide facilities for after-school programming or serve as youth community centers).[16]

FBOs are also valuable partners with government in providing social services because they can sometimes serve as credible portals into needy immigrant or ethnic communities that government agencies desire to reach but don't know how. This means that resources and opportunities are presented to these client groups when, otherwise, they would not have heard about these services.

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[13] Interview by the author with Luis Cortes, President, Nueva Esperanza. Miami, FL. January 30, 2003.
[14] Steven Goldsmith, "City Hall and Religion: When, Why and How to Lead," paper prepared for Harvard University's Executive Session on Faith-Based and Community Approaches to Urban Revitalization," (2003).
[15] Ibid.
[16] Ibid.

Finally, increased government-FBO collaboration on the ground has positive ripple effects beyond the provision of better or more services for the poor. It brings faith leaders and public officials into new relationships, opening up new opportunities for dialog. This can be very important when potentially explosive issues—such as police brutality—arise. "All of us have times when we face a situation where community relations could be very tense, i.e., a police shooting or some type of violence," explains Charlotte Mayor Patrick McCrory. "It could happen in Cincinnati, Charlotte, Boston or Philadelphia at a moment's notice, and all of a sudden you may have a racial or community relations issue at your doorstep." In Charlotte, McCrory set up a communications system with the churches and FBOs through which the mayor's office can quickly disseminate accurate information. Also as part of this initiative, ministers—black, white, Hispanic, Asian, Afghan-- meet to discuss issues of race. "We're finding out the churches and the faith-based organizations are the best way to set up these forums for communication," McCrory says.[17] Through efforts like these, government-faith collaboration is strengthening the social capital of local communities.

[17] Nicole Maharaj and Derrick Bullock, transcript of the "Mayoral Leadership on Faith-Based and Community Initiatives Workshop," U.S Conference of Mayors, June 23, 2003.

Mr. SOUDER. I thank you each for your testimony and we'll go through a number of questions here.

First, because this has come up a number of times, I want to clarify based on my perception and what we have said in our hearings and as we have moved through Congress, no faith-based organization that is receiving government grants, is practicing racial discrimination because they come under that law, is that correct? Does anybody disagree that the religious organization that practices racial discrimination could not get a grant?

Reverend LYNN. I am not 100 percent sure about that and I haven't been from the beginning, because if the religious tenet of the organization, if someone believes in whatever their religious viewpoint is that race discrimination plays a role in their theology, I'm not convinced that they would not be able to make that claim under the President's program. Whether it would be successful, I would hope not. But certainly, it's not precluded from this, the language that I see in these program guidelines.

Mr. SOUDER. That's certainly precluded in the laws that we've passed in Congress. In other words, as an author of four of those, I know we had working relations with Bobby Scott, specific clauses that says in the ones in welfare reform and the others, that you cannot practice racial discrimination. Now, there was a question if somebody challenged that. But that's a different matter because that's not being initiated by Congress. If somebody tried to practice it, then the question would be with the court.

Mr. Goode. Reverend Goode.

Reverend GOODE. Yes. I think that anyone who receives government funds ought to play by the same rules all the other groups play by, and certainly anyone who is a faith-based organization ought to have the same criteria. In fact, when I go around the country and talk with groups about implementing a faith-based program, I tell them that the rules are all the same. The rules are all the same for everybody.

What faith-based groups want is a level playing field, to be able to participate on the same basis that anyone else participates in, in terms of receiving money to help alleviate the suffering of people in communities where these organizations are located. And that's the basis of my view. And if they discriminate, take the funds from them. But don't throw out the baby with the bath water.

Mr. SOUDER. Mr. Diament.

Mr. DIAMENT. If I could just comment on what Mayor Goode just said. I think there are two ways to look at the question. One way to look at the question is if you want to say it's an equal treatment principle, as Mayor Goode has just described; then you don't frame it in religious terms per se. But you can say, look, just like other ideologically oriented organizations, whether it's Planned Parenthood or the National Rifle Association or the Sierra Club or whoever, if they have an ideological philosophy that animates their organization, they are entitled to, and it's protected by the first amendment under freedom of association, they are entitled to hire people that believe in their ideological philosophy. The NRA does not have to hire people that believe in gun control. Planned Parenthood does not have to hire pro-lifers, and so on and so forth. So if you want to frame it as an equal treatment question, then reli-

gious organizations should have the same freedom of association rights as the NRA and Planned Parenthood and so on and so forth.

But really it goes one step further. It goes to the fact that the architects of our modern civil rights laws, the framers of the Civil Rights Act of 1964, they are the ones that put into that law the unique exemption for religious organizations, having an exemption from the regular categories of employment discrimination insofar as religious faith or religious adherence is concerned. And obviously the original impetus for that was so that a synagog shouldn't be subjected to a Federal lawsuit because they don't allow Catholic priests to interview and apply and interview for their pulpit positions. They should be entitled to just interview and hire rabbis and not have to be threatened with a lawsuit for employment discrimination.

Insofar as this has been addressed on broader questions beyond the pulpit, in the Amos case, which you, Mr. Chairman, mentioned, all of the justices, all nine of them including Thurgood Marshall and William Brennan, all believed that the Title VII exemption was a direct and necessary corollary to the free exercise clause of the first amendment. And that is why, quite frankly, it's politically useful for the critics of this initiative to wave the flag of discrimination in these debates, but it's really inappropriate and illogical because, I would submit to you and to Mr. Cummings with all due respect, that it shouldn't make a dime's worth of difference whether taxpayer funding is involved or not.

My understanding, and I would respectfully defer to Mr. Cummings and others, but my understanding of the modern civil rights movement in the 1960's was that movement was not about combating racial discrimination only in taxpayer-funded programs. It was about lunch counters. It was about motels. It was about all kinds of places of private accommodation. Anywhere the law could reach to root out insidious racial discrimination was the goal of the civil rights movement. They didn't restrict themselves to taxpayer-funded religious discrimination.

So if in fact Mr. Lynn and others are correct, that this practice of religious institutions enjoying the right to structure themselves is the very same kind of insidious and objectionable and offensive discrimination as was combated in the 1960's civil rights movement, then they should be logically consistent. And they should say, you know what? We don't want to only ban when taxpayer funding is involved. We want to go and order churches and synagogues and every other house of worship, whether they are only working on their own congregants' dollars and dimes or not, and we're going to order them to desegregate, we're going to start busing people between houses of worship and so on and so forth, just like we did to root out inappropriate racial discrimination.

We are going to remove tax-exempt status from all of these institutions of bigotry. But that is not what they are saying. I don't know if it is just tactical, because that is obviously not what most people in this country would endorse or, in fact, they really do understand that there is a difference here. And the real difference here goes back to what I said at the outset.

Religious groups are potentially the most fluid and open in our society. They are concerned about what you believe and what you

practice. So you have synagogues that can have Asians and Hispanics, you have churches that have Whites and Blacks and browns, and so on and so forth. It is not about race, it is not about ethnicity, it is about belief.

Mr. SOUDER. Mr. Lynn, I would like you to comment on that also. Do you agree with the fundamental principle that Planned Parenthood doesn't have to hire a pro-lifer, NRA doesn't have to hire someone who disagrees with them, an environmental group doesn't have to hire, if they get government funds.

Reverend LYNN. Of course. Well, I do think that people are hired for jobs. That is to say, if someone is going to be in a federally funded program at the National Rifle Association, let's assume for the sake of argument that there is such a program, obviously if the person is a gun control advocate or one who wants to ban all guns, it would not make sense for someone to promote a lawful point of view.

Mr. SOUDER. Can I clarify that and make sure that we are on the same page? If the NRA got, not an advocacy grant, but a grant, say, to do training of gun safety where advocacy isn't the issue, would they still have the right of association to only have people who agreed with their position to do something that wasn't advocacy?

Reverend LYNN. Sure, because there is not a long history of discrimination as there is a long history of discrimination on the basis of race, of religion, of gender in this country. They would have the right to make those decisions. But, again the person would have to be qualified for the job, and presumably that would make the most likely person the most likely to be hired.

The difference in these programs is that, let us leave the race issue aside for a moment, but all of the regulations, including the legislation passed by this House in the old version of H.R. 7, would effectively permit, just for the sake of argument again, a fundamentalist Christian group from putting on its job applications "No atheists or Jews need apply." And it would be permissible, under the theory that Diament has just expressed, for an organization to say, in order to maintain our integrity as a religious body, we will discriminate.

And, in fact, we don't have this as a theoretical program. A well known psychotherapist in Georgia, for example, was refused to be considered for a job by the Methodist Homes for Children in Georgia, precisely, and this is what he was told, and this is no big secret, because he was a Jew and they didn't hire Jews.

I don't think this is the kind of conduct that is consistent with a responsible way to do Federal funding. If a religious organization or any other organization receives Federal funding, I think it, at a minimum, needs to abide by the basic civil rights principles long fought for in this country, and I think there is a big difference between an ideological thought about gun control and the status of your race, your religion, your national origin, and your gender.

Mr. SOUDER. Once again, I think it is really important that there is a fundamental disagreement here, where my belief, and I believe it has been expressed in the laws here and in the debate, is that we are not debating race, gender or other discrimination laws, we are debating religious questions.

Nobody here is disputing that an Orthodox Jewish group that has to hire a Baptist, in other words, that is a legitimate debate. But raising the other questions are at best going to be court-decided. And the burden of proof is going to be on the court to argue that, because the administration and Congress are not arguing that those discriminations can be practiced.

Reverend LYNN. No. But, Mr. Chairman, the court has considered some of these issues. For example, in a privately funded Roman Catholic school, there are a number of court opinions that hold that a privately funded school can choose to fire a pregnant single mother because that status is inconsistent with their moral philosophy. That has been upheld because it was a privately funded religious group.

So the question is, if we are going to now treat publicly funded religious groups in the same way, does that in fact mean that, it appears on the face to mean, that now publicly funded groups can discriminate on the basis of gender, if there is a religious hook on which to hang that argument.

Mr. SOUDER. Of course, you are defining, because only one gender can become pregnant, that therefore that is discrimination by gender, and not by a religious belief of not getting pregnant outside of marriage. In that, it is important that we separate those two types of things. In order words, that is exactly what the case in San Francisco is dealing with on funding abortion, is an argument on gender specific. Or, let's say, it is at least indirectly related to the argument that abortion and contraceptive devices are related to gender discrimination as opposed to a moral discrimination, which, of course, many religions don't agree with.

Reverend LYNN. Well, Mr. Chairman, I agree with that. There are two different issues. But I think that it is safe to say that the courts have not looked at it necessarily that way but have looked at it just as a matter of if the principle, the religiously based principle, says we do not want to have teachers who are pregnant and not married, we can fire her. And those decisions have been upheld.

With private funds, it is one argument. But once you start having public funds used for the purposes of, what I would consider invidious discrimination, I think you have a whole change in the moral and the Constitutional calculus that you need to apply in this. I have to say the Catholic Charities case, I do not think, is about the faith-based initiative.

California's Catholic Charities did have its day in court. I believe it lost 8 to 1. It argued that the California law exempting religious organizations was too narrow and therefore violated religious liberty. The court did not agree with it. But that had really nothing to do with the administration's proposals, because even if the administration's proposals became law, Catholic Charities would still not qualify for an exemption under the reading of California law.

So that really I think is a red herring in the debate today or the discussion today.

Mr. SOUDER. Mr. Cummings.

Mr. CUMMINGS. I want to thank all of you for your testimony. I wanted to just go to Ms. Hollman, perhaps Mr. Lynn.

As I was listening to Mr. Diament, and he raised the two cases, the FEMA situation and the American Treasurer's situation, can you just comment on, you know, I noticed one interesting piece on both of those cases. And I think you used the term "government neutrality," Mr. Diament.

And I was just, I mean, something that is sort of different about those cases that I am sure you were making a different kind of point, is this whole thing of, I guess, discrimination, say for example, in employment. A little different there.

But I would just like for you all to comment. I understand the neutrality piece and everybody benefiting from government. I got that. But I just want you to comment on those two cases, Mr. Lynn or Ms. Hollman.

Ms. HOLLMAN. I can speak generally. I think Mr. Lynn can speak to the FEMA issues probably more specifically.

The word "neutrality" is difficult, because on one level, it has some truth and people can say that the court has applied a principle of neutrality. But it is not as broad, it is not as clear as it seems.

At times, in order to treat religion neutrally, you have to recognize it and treat it differently. It is wrong to say that religion is never treated differently. It is specifically, you know, specifically treated differently in the first amendment, just as it is specifically treated differently in Title VII, in this list of protected categories that we talked about. It is not just like other ideologies.

So there is a basis for saying that religion can be treated differently from other secular enterprises. And as I understand the change in law with regard to funding repairs for historic buildings, or FEMA, or repairing after national disasters, you have had prior law, interpretation of case law, that said that government is not required to fund the repair of buildings, just like it is not required to build a synagog or church or school for an institution, even though it needs the money. It is not required to repair that.

Now we have the administration that says, let's look at this law differently and see if we can allow the funding of that. And to do that, they have to say they're not funding anything explicitly religious, they are sticking to the building part of the program.

What is interesting is that those cases make the best—those examples make the best case for this neutrality principle. Treat everything the same. It is very different, I think, from what we are talking about in the majority of the faith-based initiatives, where there is a real risk of what is being funded actually having religious content, having the ability to promote a specific view of religion and advancing religious discrimination.

Reverend LYNN. Specifically, there are certain emergency services that have been provided by government historically and have been permitted to go to religious institutions on the basis of kind of an emergency claim. I can think, for example, of repayment to churches that housed victims after a hurricane, or so on. So this has been going for a long time and doesn't represent nearly the magnitude of the issue that is before us on those other programs.

Even in the comments that were published by various administration agencies, they seem to take a different viewpoint on this issue of construction grants or repair grants for churches.

The Save America's Treasures Program is based, the funding of certain historic buildings is based, on the idea that the law has changed. There is an Office of Legal Counsel memo that says that it has, although when you really look at it as I have done, it does not make a very compelling case to overturn three big Supreme Court decisions in the 1970's that make it clear not only that government can't—well, it makes it very clear that government cannot provide funds if any part of the building that is being repaired or constructed is going to be used for a religious purpose.

They don't parse it up and say you can spend 30 percent of the money if 30 percent of the tiles are walked on by religious people and the 70 are not. They don't do that. They just say it is a blanket prohibition against using government funds for the construction of religious buildings.

And indeed the comments of the Department of Housing and Urban Development, recently published, do indicate that even in that instance the administration would agree with me, or at least in part with me, that government funds cannot be used to build buildings.

When it comes to these very controversial matters like the construction projects at the Old North Church or the California Missions, I recently testified against an earmark grant in the Senate for $10 million to California Missions.

Here are Missions, 19 of which are active congregations, Roman Catholic congregations, 1 of which is 2,500 congregants. It seems to me that when you combine that with the millions of visitors to those California Missions, it is really not the goal or responsibility of taxpayers to provide repairs to windows or icons out of tax dollars for active congregations.

So we have opposed the funding of active congregations, repair of their windows, repair of their walls, not because we don't care about history but because we also care about the historic principle that government is not the ultimate collector of the plate collections from the taxpayers to fund these buildings. So I think the gentleman, Mr. Diament, is wrong in his sweeping interpretation of these laws.

Mr. CUMMINGS. But even if your—what you just said—so I guess you would not have a problem if in front of the church there was a monument that was put up over 125 years ago and it became a part of the American Treasurer's portfolio to be repaired. That is a little different than the stained glass windows in the church?

Is that a distinction there?

Reverend LYNN. I think that is an important distinction. Some people have used it. We have never, to my knowledge, filed any lawsuits or objections, particularly in those instances where properties are landmarked by the government. They didn't even want to be landmarked, they were landmarked, and they have all kinds of new responsibilities. It is not effectively a religious icon, it is not a religious artwork, it is not housing a congregation, it simply is on church property. That I think is a very different Constitutional issue.

Mr. CUMMINGS. To Mr. Fitzhugh, I appreciate what you said. I was just sitting here thinking about when you were speaking. And you too, Mayor Goode, Reverend Goode. I can understand—I have

this saying that we have one life to live. This is no dress rehearsal, and this is that life.

And I think that when we see what we see—I live in a neighborhood that produces the kind of young men that you just talked about. And I guess the most compelling argument is that we need to be about the business of saving lives and helping lives become all that God meant for them to be.

Trying to—in other words, that same guy, like Dr. Ben Carson, who practices medicine in Johns Hopkins in my district, here is a man who could have easily been in a penitentiary. But because he had certain opportunities and guidance and a turn in his life, he is now one of the most—probably ranks within the top 10 neurosurgeons in the world.

So I think we will always have a fundamental argument about how do we make sure that we do all we can for our fellow men and women as we live?

But on the other hand, as I said in the opening statement, I think we have to be very careful that when we save that person or help them get to where they have to go, that we still have an institution in this country where they can continue to thrive and that respects other people's rights.

And so it is tough when you have to face what—like you said, Mayor, where you see this every day. You see the lives end up being destroyed. You end up saying, is there something I can do to help?

So I think that we have come up with solutions. It is just that we don't want the solution, part of the solution, to be discriminating against folks with their tax dollars. I mean I think you kind of agree with me, I think.

Reverend GOODE. Well, I really don't.

Mr. CUMMINGS. That is good.

Reverend GOODE. I really want to just say this——

Mr. CUMMINGS. But do you understand that I understand your passion and Mr. Fitzhugh's passion? I really do.

Reverend GOODE. I was the chief executive for 8 years; well actually that, plus city manager for 4 before that. So for 12 years I had responsibility to provide services to people. And from a chief executive point of view, my job was to try and alleviate as much suffering as I could.

And so I used institutions within that city, including local congregations, because I needed them to deal with the problem of homelessness. I needed them for shelters, I needed them for AIDS hospices, needed them to help feed the hungry people in the city, and any other agencies that could do what they could do in those neighborhoods.

So from a practical point of view, I went to those agencies. And my life has been spent basically doing practical things—and I love to spend my time delving into the legal and research and all of those issues, and I love people who do that. But that is not what I do. What I try and do is find a workable, practical solution to a problem that is eating away at the hearts of communities where people live.

And along the way, there will be issues of discrimination, there will be issues of fairness in some issues. But at some point, we

have to stay really focused on how can we get moneys from foundations, from businesses, from government, into the hands of people who are going to, in the end, want to help to alleviate the suffering of people in these communities.

One last point. That is, that I grew up in the South. I was a sharecropper. I know about discrimination. I hate discrimination. And we could put a face of discrimination on this. And we could have good sound arguments on both sides. And I think that there will be some folks who will discriminate. But I think, sir, that we can do a whole lot of good to a whole lot of folks without discrimination.

And I think that those who discriminate ought to be dealt with. But we also ought to use the resources, in my view, to help those who need it, and deal effectively with those who discriminate.

Mr. DIAMENT. If I can make a brief comment on the practical point. I have been involved in this issue for quite some years. And what is most disappointing to me is the tragedy of the opportunity that was missed to get at what Mayor Goode has talked about here. And what I mean about this here is the tragedy of the fact that what was a more or less bipartisan initiative in previous years and an opportunity in the last Congress, in the year 2000–2001, to not only spur greater partnerships with government and community and faith-based groups on this issue, but actually it was an opening for what I believe was an unprecedented coming together of Republicans and Democrats, an infusion of new dollars in an unprecedented way into some of these social welfare programs in a way that, quite frankly, a Republican administration and a Republican majority in Congress may not have otherwise been prepared to do. But there were clear indications and public statements by the President and by Republican leaders in this House and the Senate that they were prepared to put more money on the table.

Because we all agree there is not enough money on the table. We all agree that just redividing the pie is the wrong thing to do. The pie has to be made 3 times, 4 times, 10 times bigger than it is for the social welfare programs.

There was a moment when folks could have come together, we could have pressed ahead in hashing out, negotiating some of these tough Constitutional and other civil rights issues and moved ahead.

And the tragedy of partisan politics is what befell this initiative. And, if I may, the one appeal I would make to you, Mr. Cummings, and to Chairman Souder and to others is, probably not this year because it is a very political year, but at some point we should come back to this. And we should come back to this in a spirit of hope rather than cynicism, and of discussion rather than debate, and find a way to put both resources on the table and also empower new partnerships and really get to the people that Mr. Fitzhugh and Mayor Goode have been talking about.

Reverend LYNN. Mr. Cummings, by the way, I think I did miss that moment when anyone was talking seriously about refunding programs tenfold for those in deepest need, although I would love to go back to that moment, because I think that is exactly what we need.

The other problem, and I have sat, Mr. Chairman, through a number of these hearings over the past few years, repeatedly try-

ing to find answers that would justify the need for continuing this discrimination possibility in government funding, and again this morning, very moved by what Mr. Fitzhugh talks about in his program.

But why is it important, perhaps it isn't for him, that he only be allowed to hire Christians to serve the dinners, or to train young people to use that recording studio in his facility? Why is it important that it be hiring on the basis of religion as a guarantee that comes with that funding?

I simply don't understand why Methodists should be expected to change the sheets in a homeless shelter differently than non-believers, or Jews or Hindus. It is not part of my common experience in working in any of these facilities or with any of these groups at risk. It doesn't make sense.

Mr. CUMMINGS. Thank you.

Mr. SOUDER. I want to make a statement because you have referred to that before. And I have tried to be very cautious as we worked through this. And I realize there are fundamental Constitutional questions involved. I realize there are. I apologize for not saying "swear or affirm" in the oath this morning, because I always affirm an oath, probably for different reasons than you do, but I grew up in a very small separatist denomination and have great skepticism about how we approach these types of issues.

But we have a lot of diversity in America. And what I don't understand is your last statement that you don't understand where people of deep faith are coming from, whether they be Christian or Orthodox, Jew or Muslim, who believe that when they are motivated through their own means to go out and help other people, that their mission is comprehensive, and that serving the soup or providing housing for somebody is a manifestation of that. That manifestation isn't uniquely Christian, Muslim, Jewish or any religion, because you are providing the soup.

But you represent an organization in providing the soup that in fact, as a Christian, I believe reflects the glory of Christ. And if somebody in that organization doesn't reflect that glory of Christ or doesn't reflect the principles of the Muslim faith or the Jewish faith, it undermines the broader thing that motivated you to get involved anyway to give the soup, to provide the housing.

Now, that is why I asked the question in relationship to the NRA or other groups, that if an NRA group is providing gun safety training that isn't ideological, but underneath it, if they have people in their organization that don't share their views, if there is an environmental group that maybe is just conducting a bird hike, but has somebody wearing a T-shirt or advocating the killing of bald eagles for dinner, is not likely to be someone that the organization wants to be affiliated with.

And those who have deep faith believe that their organization should reflect that faith, not in who they serve, not with government funds to proselytize, but that the people in that organization reflect a shared association value. You granted that for secular groups. Why can't you understand that passion in the different religious groups?

Reverend LYNN. Well, I certainly understand the passion.

Mr. SOUDER. But just a minute ago you said you didn't understand why they felt they needed to have people delivering the soup of a shared association value. You just made that statement.

Reverend LYNN. Well, yeah. But I do think religion is different, and I think it is more powerful than ideology. I think as a consequence, that is why the framers of the Constitution treated religion differently. They said it was in some circumstances more protected, and other circumstances more—we had to be more careful about subsidizing, precisely because it is unique. It is not like your thoughts on gun control, or tree hugging, or any other issues. This is what matters the most.

And my problem is trying to figure out why all of these groups that we have been talking about and you have been discussing for years now, most of them don't want to take that final step and say, we would never really hire someone who wasn't a believer. Why can't we get the funding to those groups willing to play by the civil rights rules? And if there are people that say, look I just can't live with that. I think you had one witness in the last 4 years who said that, then maybe we should deal with the funding for the 98 percent of the other folks and just say, look, the Constitution, rightly or wrongly 200 years ago, we decided you can't get the funding.

Then we would find the resolution. We would find a way to implement the dozens of suggestions that were made in the group that Senator Santorum set up that Reverend Goode and I were on. We could do all of that without violating anyone's Constitutional rights. We just have to have the will to do it. We have the capacity to do it.

Mr. SOUDER. We have, understandably, a deep disagreement in vision, including what the Founding Fathers meant between religion and giving certain advantages to the Episcopal Church. The wall of separation was to protect Evangelicals like myself from the State, in forcing church schools, funding the home of the Episcopalian pastor. It was not meant to say if there was even competition.

Now, that is a Constitutional difference in how we interpret Madison, how we interpret Jefferson, and so on. But there are two schools of thought on that, not one universal accepted thought, which is what we battle through.

But I want to move to a couple of other questions, and I want to reinforce one thing that Mr. Diament said. And that is, I don't think we are ever in danger of increasing anything tenfold. But I think there was a goal of many of us, and I can speak deeply from personal experience, when we were trying to work and did successfully pass a number of these things under the Clinton administration.

But as we worked with then-Governor Bush as he was running with Steve Goldsmith and Senator Santorum and I, we talked about this. And one of the political dilemmas that we face here, bluntly put, which isn't usually talked about in public, and I would like Reverend Goode, would you rather be referred to as Mayor Goode or Reverend Goode?

Reverend GOODE. I got promoted to Reverend.

Mr. SOUDER. OK. Well, I want to get your reaction to this statement. Because part of the problem with this faith-based initiative,

and I appreciate that the administration has moved forward. Mr. Diament's statement triggered this for me.

For years, Bob Woodson hammered on me as a staffer and then as a Member about the zip code test which you referred to; people living in their zip code. And the problem that we have is that many, if not almost all, government grants are going to organizations that were not neighborhood based, community based, were not particularly in low-income, minority areas. Black, and Hispanic often are disproportionately represented, and the dollars weren't going to those groups.

And many of those most effective neighborhood organizations were faith-based. The problem that we had as Republicans is our Members don't represent those districts. And so when the Republicans are in the majority, we tend to represent, for the most part, the few of us—I represent Fulton, IN, it has 230,000 people, so it has the traditional low-income area that, often at least, say two-thirds are different minority groups, are obviously White, poor people as well even in an urban center—but that most of our Members represent predominately suburban and rural districts. So it was very hard to get kind of traditional support for dollars in their districts.

And when we talked about the difficulty that this initiative was going to have, the question is we had a moment in time where a number of Republicans, partly because their Presidential candidate was advocating this and many of us said this is the right thing to do, because we need to get the dollars leveraged and down to neighborhood groups that are based in largely urban districts that we don't represent.

And we ran into this buzz saw of arguing, not about racial and sex discrimination, but really homosexuality and religious preferential hiring that could lead you into a variation of the sex discrimination question. And those issues have exploded this category.

Now, I want to ask as a practical matter of someone who has been directly involved in this program, have you seen an increase in dollars that have gone to neighborhood-based organizations, that are Black and Hispanic based, that would have been different in Philadelphia and other places around the country? Because to me, one of the fundamental challenges of this system is are we accomplishing what many of us who supported faith-based initiatives, because I am not saying Pat Robertson doesn't have a wonderful group, I don't really know. But that wasn't the primary target of what we were trying to do with this initiative.

And I would like to hear for the record what you think is being accomplished through this initiative and are the dollars getting to where we intended the dollars to go?

Reverend GOODE. There is no question at all that there has been a significant increase in funding of neighborhood-type groups, African American, Hispanics, Asians, throughout the country.

I have had the opportunity to travel in the last 5 months to 25 cities that have received funding, and have watched them struggle with getting those programs off the ground. And they are getting them off the ground and are beginning to move.

So if the question that you posed to me is, is there an increase in funding to groups who never before received funding at the neighborhood level, the answer is absolutely yes.

Mr. SOUDER. Dr. Sherman, I know you have researched this and you have worked with a number of the States and have been doing some statistical things. Do you agree with Reverend Goode?

Ms. SHERMAN. Yes. In our study of 15 States, yes. We identified the recipients of government contracts, faith-based organizations that were regulated by the charitable choice rules. And we discovered that among congregations that have received these dollars, more of them were minority-dominant congregations than White congregations. So we have seen that as well.

And also over 50 percent of the organizations that we discovered in the 15 States, had received government funding for the first time only since the passage of the charitable choice rules, and often only since the faith-based initiatives. So we definitely have seen a correlation between groups that previously were not receiving these types of dollars, we have seen an increase in those organizations since the administration's efforts.

Mr. SOUDER. I am one who has been concerned about the money going directly to churches as opposed to separate 501(c)(3) organizations. Have you seen—spart of this initiative was supposed to help train organizations that may not have CPAs and attorneys in their congregations to try to set up such organizations. Have you seen that also through the initiatives?

Ms. SHERMAN. Yes. Actually I would say that despite the fact that the original charitable choice rules did allow for the funding to come directly to congregations, and we have not in our research discovered any particular problems with that, nonetheless most of the people that are associated with capacity building and training efforts, encourage congregations, even though they are not required to do that, to go ahead and set up a separate 501(c)(3), because it makes the accounting issues simpler. It protects them from audits and the like.

So we haven't seen in our research any instances of it being problematic if the congregations didn't set up one, but it has definitely been the case that most of those that are involved in the types of training initiatives such as those funded through the Compassion Capital Fund really encourage congregations to take that step as just an extra safeguard.

Reverend GOODE. I would just add that for 35 years I have urged local congregations to form a 501(c)(3), set up a separate corporation, don't get the morning offerings mixed up with the government funds. And I think that is the perfect way to do it, in my view. And I think that when you don't do that, that you are really skating on very thin ice. It may be legal, but it is not practical from my point of view, just in terms of bookkeeping. It is in terms of, separating out the church's money from the government's money.

Reverend LYNN. Mr. Chairman, and Mr. Cummings, I think that part of the question is: Is more money going to a certain kind of institution? That is question No. 1.

I think there are two other questions. Have more people been served overall? And, then, were they served better? I think that is where the data is lacking. You know, when people start to tell me

about new programs getting money, the first question in my mind is where did that money come from. Was it taken from someone else?

There was a very controversial case—I am sure you are aware of it. In Boston, a homeless shelter for veterans was told it would have to cut its beds by 50 percent. It was a well-established, long-serving program. The faith-based office said, well, don't worry, the money is going to go to North Carolina and Utah. But, of course, I don't know how veterans in Massachusetts were supposed to get to those other facilities.

I use that story all over the country in debates and discussions. Eventually they changed their mind and gave that Massachusetts organization back its money. But it seems to me that if there are homeless veterans in three places, we are not able to say "job well done" unless we are serving all of them; not taking one, and serving—taking its money and using it for somebody else.

Mr. SOUDER. Mr. Fitzhugh, I understand that you have an appointment. I wanted to ask a question to you before you go, if you have time, and then you are excused if you need to go. We may go a few more minutes yet.

You heard Mr. Lynn's comments earlier. Then you heard some of my comments. Let me first ask a question. Do you accept government funds? Are you getting any faith-based grants at this time?

Mr. FITZHUGH. We actually got an appropriations, D.C. Appropriations Committee's funds.

Mr. SOUDER. You understand that with those funds you can't directly proselytize? Was that explained to you in the process?

Mr. FITZHUGH. These are earmarked for renovations.

Mr. SOUDER. And do you feel that in the renovations of the building, which basically is a secular activity—the building doesn't proselytize, may attach a sign to it—but do you feel that your mission would be compromised?

One of the delicate things nobody really likes to talk about here are that in every community, in every church, from counseling and from what, you know, but it hasn't been proven in a court, there are allegations; I know partly because people don't like to turn in neighbors. You can't do certain things in the church; so-and-so may be abusing his wife, so-and-so may be a drug dealer, everybody in the congregation knows that, or at least thinks they know that. And it would undermine the mission of the church if that was revealed.

Many times there are different rules set in churches, more stringent than the societal rules, because they believe it is important to have a strange statement from that denomination about how they approach things, or their approach.

I know I have been with a Member up in Newark, NJ. There are kinds of standards. They have don't wear a hat here. Other people have other types of guidelines to try to put discipline in when they are with high-risk populations, that under Federal rules if you didn't have a religious exemption would have to be basically someone who has been found guilty in a court before you can act; which may or may not ever happen.

The question is, could you function and fulfill your full mission, or would be interested in the dollars if, in fact, you had to take

anybody who walked in, who was qualified for a particular job such as painting on the wall, which may be anybody, as a staffer of your organization? Would that change your mission or your goals?

Mr. FITZHUGH. I think one of the things that we are challenged with and what we face on a regular basis, I have heard a lot of the testimony today. And for me and what we do, we have limited staff. We have already buried four students so far this year.

We have already seen a number of unwanted pregnancies. We have already been surrogate parents for a number of displaced students. One of the strengths of what we do is that we as a team present young people with an opportunity at what we call life. And for us that life is getting a handle on their own individual purpose and destiny in life. And as a team, we have wrestled with, we have talked about our vision and our mission and how do we acquire funds.

If someone, Mr. Cummings mentioned earlier that a lot of people in church reach in their pocket and pull out money and do a great many things. We just have found that in urban America, donor-base-supported work is a progressive idea to give to those kind of ministries. We are always strapped for funds.

I would think that it would be a compromise to what we believe if we would present to students inconsistencies in what we are saying as a collective voice about what they can accomplish in life and who they are, if there are persons who mince those words with us.

So as it relates to the moneys we just received for our renovations, we believe that there is a whole generation of young people today who are unreachable, nobody wants to deal with. Teenagers, urban teen-age kids, people are afraid of them. That is our target. And we realize they live in a media-dominated world.

So we have a recording studio and we are building a TV studio and we are building a dance studio. And hopefully we will be able to love on these students. Hopefully we will be able to give these students a sense of identity, a sense of self-worth, and hopefully we will have a consistent voice in that.

Quite frankly, I don't think it will compromise my program if the guy who is nailing the nail doesn't believe what I believe, or if the guy who is laying the brick doesn't believe what I believe. Just build my building, renovate my building.

But when it comes to our program staff, we believe it is important to have a collective voice.

Mr. SOUDER. Thank you. Mr. Cummings.

Mr. CUMMINGS. I just want to thank you before you leave, Mr. Fitzhugh, for what you are doing. And it is very important. And, again, we are trying to figure out the balance here. And there is absolutely no doubt that programs like the one you have are essential. Probably not enough of them.

And I was just thinking maybe some of us in Baltimore need to look at your program and see what you are doing, because we have a lot of unreachables. And we just found out, we were just looking at our stats—50 percent of all the kids that get to the 9th grade don't graduate through the 12th. Then we see something like a 30 to a 38 percent illiteracy rate even with people who graduate, which means that we have a lot of people who are in trouble. And

these are the ones that—you know, I am talking about folk who—the ones who graduate, at least they stayed in school.

But again, as I said, we in the Congress wrestle with where we fit in history and how our actions will be viewed years from now, and at the same time we want to make sure that we say to people to even go into the history, to go into the future.

But I really do appreciate what you have said and thank you very much. I hope to visit your program. I want to do that.

Just one question. Do you—I assume—does the House house people? In other words, do they come and visit or what?

Mr. FITZHUGH. The House is after school, 3:15 to 7:30. We looked at doing some emergency shelter because we have had so many students who have had emergency shelter needs. But if our students found out that we were sponsoring emergency shelter, all of our students would be an emergency, because they love the experience of being in a place where they are endeared and they are loved.

So, no, we don't house. The school is out at 3:15. Kids are at the door at 3:16. And we have to shoo them away at 7:30 to get home before it is gets crazy again.

I think the other thing is that one of things that we try to do with our students, and we recognize that not only do they need a safe place, they also need to get a handle on their life track. And there is a way in which we can communicate that to this population.

People talked at one time about their being an unchurched generation. And at one time, you know, we had a conversation among some of young ladies who were in certain situations and unwanted pregnancies, and young men who were not taking care of responsibilities.

Well, these kids, you know—I have a young lady now who is pregnant. And my thought is, she is still a baby. But her mom was on crack when she was pregnant with her. And so we have digressed to the point now where we have the students who really don't have any mother at home, training that is helping them. So we are trying to build the creative means by which we can support every facet of these students' lives. They have very, very complex issues.

We have had a lot of success because of our creativity of how we can communicate to this population. And I have a friend, a colleague in Chicago, who just started the House/Chicago. They meet once a month for a big event and during the week for smaller events. He said he has never seen this many kids turn out.

But he has taken the elements of what we do. We found ways in which, creative ways, in which to get students plugged into activities, and along the way we realized we don't have to hit them over the head with a Bible, we don't have to force anything down their throat. Most of these students want to be valued, want to be encouraged, want to be directed, want to be loved, and want to be pointed in the right direction. And we don't know how that is going to unveil for all, each and every student.

But the least we can do is, like I said, to create a moment for life change. Now, it might come at a midnight walk at a camp. That might come after school when you take a kid to get a cheese-

burger. That might come when he is sitting down recording music or rapping a song. That might come in the sewing class we had.

A lady said, I know how to sew, and we started a sewing class, called "Making Stuff."

I don't know where that moment is going to come. But I think we have an obligation to find that moment. And I can't get the vision, the image of that movie Jaws out of my mind. When that police chief saw that shark for the first time, he said, "We need a bigger boat." I don't care what kind of boat it is, we need a bigger boat. And I am looking to the mouth of the shark. I have seen things I had no idea I would ever see, and I have witnessed what these students are carrying that I had no idea that they were carrying these kinds of secrets.

And there are institutions that are making an impact in those areas. And I think our challenge, as you mentioned, we have to find out how we fit right here. But we have an obligation to find that bigger boat; whatever that boat is, we have to find that boat for the welfare of this population.

Mr. CUMMINGS. Thank you very much. Thank you.

I just want to move now to Ms. Hollman. Ms. Hollman, you said something. I know you have to go, Mr. Fitzhugh, thank you very much. We really appreciated it.

Ms. Hollman, you said something that really triggered a thought in my mind that I guess I should have figured this out long ago. One of the things that we see over and over again that we don't seem to suffer here in this country, is this warning throughout the world based upon religion.

And you said something. You said, we want to be careful that we do not divide our citizens along religious lines. And it is interesting that in our country we don't have, we don't see what we see around the world. I mean, I know this is a much broader question than what we are, I guess, kind of dealing with here, because we are dealing with where the rubber meets the road here.

But is that a concern of yours, that eventually you can get there by this, what I call erosion, or the path we may be taking ourselves down? Are you following my question?

Ms. HOLLMAN. Yes, I am. I think that is a real danger. And that is why we continue to say these things over and over. I think about it every time I hear someone say, what this initiative really is about is funding what works.

And I think—what has worked in America? And I think the first amendment has worked. I think we can look at the way we treat religion in this country as something that has been good for religion, so that religion has flourished and we have lived in relative peace with a tremendously diverse population of religious beliefs.

I think some of the examples that you will see in the written testimony kind of point to how the faith-based initiatives can divide us along religious lines. Some of it was talked about today in how this is part of the political process. You have political people deciding which groups should be funded, which are essentially favored. And that is something that we have avoided, and I think it is something that we should be proud to have avoided and we have probably saved ourselves a lot of conflict that other places haven't.

Mr. CUMMINGS. You know, Mr. Diament, and then this will be my last comment, you know you said something. And I think it is directly corrected with what Ms. Hollman just said. I think that we would be naive if we did not realize how much politics plays in all of this.

And I am not saying that you have been naive, because I think you hit this golden opportunity, then it kind of slipped away. But it is interesting that as I move around the country campaigning, and I go into African American communities, and I see something happening that is very interesting. And that is that there are areas that I normally as an African American would have been welcome to speak on behalf of a Democratic candidate, but because a church has received certain funding, I think, OK, I can't say—I check out the history—and usually this is the case—and they give credit not to the Democrats but to the Republicans for the faith-based initiative stuff.

The next thing you know, I am not welcomed to speak. I don't, and it is very interesting. And I think that if—and so, you know, when you talk about this division based on—when you and Ms. Hollman talk about division on religious lines, I guess what happens is government creeps in, creeps into the faith-based arena, and it gets a little murky there.

Because I guess some of those folks are saying, look, you know, I think you, Mayor Goode, alluded to this, about how there are groups that have never gotten any funding before and now they are getting funding.

We see, in my own State of Maryland, there is an article in the paper this morning that talks about how our Governor wants to establish an office of faith-based, but doesn't want to tell what it does. And the legislature is saying, OK, we can do that, but at least tell us what it is going to do, like every other department.

And I just don't, I mean, I think there are so many—this thing becomes like a web after a while. And I don't know where this leads to. I think that we have to be very careful that we protect the Constitution, because as Ms. Hollman has said, we know certain things work. We know that.

And we know—I think sometimes when we compare what happens in other countries around the world, we also see what doesn't work. And so we have a lot of competing interests, a lot of competing concerns and priorities. And I just think that we have to continue to try to wade through this so that we come out with the best result in the end.

But you know, the bottom line still remains, I think, this whole concept of one life to live and how you do that in the now, but, at the same time, protecting your future. So I just want to thank you.

I don't know if anybody has any comment on what I just said, but I really appreciate all of you and I really thank you for your testimony.

Reverend GOODE. I just had one point. And that is this; that you raise the issue of politics. And I would only simply say this: that a long time before the current President was in office, a lot of us were working on faith-based initiatives. And I don't think that the idea involving faith-based institutions with the solving of problems

of people in neighborhoods started 3½ years ago. It started way before that.

In fact, my own experience, going back to 1968, when I was going around the local churches, filling out applications for 221(d)(3) and 204 and 203 applications and 2 applications to get housing for local churches who only had an idea that they wanted to do something about a vacant lot in that neighborhood. We are able to take that. And really with 50 separate congregations, we probably did using the 501(c)(3), about 2000 housing units between 1966 and 1978.

So I would only say to you that I know this is an election year. But we also have to be practical in terms of how are we going to help the people who live in our neighborhoods, in our zip codes, and I have opted from my own point of view to be practical about this and take the money from the government because it's really my money, too. I mean, you know, every time I see my pay check, I know it's my money too and I want to have a say in how my money gets spent.

Mr. SOUDER. I want to thank each of you for your testimony. We'll probably have some additional written questions to draw this out because we have been doing a series of faith-based hearings where these issues, the legal issues come up. Generally speaking we have had almost 50/50. We have had hearings in Charlotte and San Antonio and Chicago and Colorado and Los Angeles, and practitioners disagree on where they would draw the lines on how to do it. We've mostly been trying to draw out what the activity at the grass roots level is on the faith-based, but this is going to be our defining hearing as far as some of the legal issues. So we may have some additional written questions. I appreciate that each of you have been major players in different parts.

Clearly the faith-based initiative hasn't brought the religious conflict in America. All I have to do is find five Baptists in any city. They'll be in three different branches, at least, if not five, and I believe that we can at least reach consensus in a narrow frame, if not the fundamental part of direct government funding, and we need to build where we can find the consensus and then continue to debate at the edges.

For example, in my opinion, and I want to state this for the record, the more important part, as I implied at the beginning, was the $500 credit which went down to $50 or some ridiculously low sum, and that we had a compromise worked out with key players that would have been able to move that earlier if we'd have focused on that part. And we need to be looking at how to make non-itemizers eligible to put their money into these churches and avoid some of the direct confrontation by at least agreeing on that. We had worked out compromises on the training that Bobby Scott and Chet Edwards and Jerry Nadler and Barney Frank and others who have been critics would allow those funds and would have supported if we can keep it out of the political arena, that to train faith-based organizations with their discrimination of association hiring intact as long as they weren't applying for government funds with that. But even that kind of consensus is going to breakdown if this becomes too political.

Then at the margin, we have accepted as we have moved these pieces of legislation, sometimes as we moved a number of them to

the chagrin as I accepted things like "clear break," if there was going to be a prayer it had to be at least 5 minutes before the start of a program. It couldn't feel any pressure, maybe even farther from that, that there had to be a secular alternative. I know that there are disagreements as to what is the distance you can have. In my opinion, for example, in the first faith-based initiative we took out Head Start and some programs at least in distant areas where you wouldn't have choices. I think the majoritarian Christians, unlike those of us who came up in more smaller denominations, don't think of this as Christian being the minority and how would we feel if a seniors lunch program or a Head Start program you had to bow to Allah at the beginning, or you had another religion that isn't majoritarian. And we need to work through those sensitivities.

At the same time, that all said, I still am concerned that there's not an understanding of the opponents of what passion motivates people to give extra time, extra contributions, and how many of these resource challenged groups, even if they can take non-itemized deductions, even if they have leaders like Reverend Goode, aren't going to be able to get the dollars they need and that these faith-based institutions whose integrity is critical in these urban areas should have access, if they'll follow the rules and if they're trained and if they have a 501(c)(3) for these funds.

It started in the areas of homelessness and AIDS, because nobody else would do it. And when this was done under Jack Kemp, and in the early 1980's there weren't a lot of questions because nobody would take care of people with AIDS, except for Christians who weren't afraid if they got it and they died their life would be ended because they had an after life. So nobody was asking a bunch of questions. And I still think that this idea that there is this kind of a giant secular position excludes and discriminates against some of us. But we need to be careful, those who argue for this faith-based initiative, that we don't suck religion in and that we protect the minority rights, because I don't think, from most of the consensus, that most Americans would agree with something that was said by Ms. Hollman, and that is all it takes is to look around the world and see that religious intolerance is a huge problem. And if the faith-based initiative exacerbates or promotes religious intolerance, it is not good either. But there also ought to be tolerance of those who do have deep faith and want to participate in the public arena without discrimination. And that balance is what we are trying to work through.

So if any of you want to submit additional comments with this hearing, respond to the questions, this is hopefully going to be a good forum to carry that through. I thank each of you for your public debate and for your research. And with that the hearing stands adjourned.

[Whereupon, at 12:13 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

Answers by Rev. Barry W. Lynn, Executive Director, Americans United for Separation of Church and State, to Questions from the Subcommittee on Criminal Justice, Drug Policy, and Human Resources (hearing on "Legal and Practical Issues Related to the Faith-Based Initiative")

1. Do you agree that Americans have a freedom to associate protected by the First Amendment?

Response: Yes.

2. Do you agree that this constitutionally protected right to associate allows people of a common faith to come together to form religious organizations?

Response: Yes.

3. Do you agree that a religious organization as part of its mission can decide to perform social services?

Response: Yes.

4. Do you agree that a privately financed religious organization performing social services can legally hire only employees from its religious tradition? Do you agree that America is stronger because it is religiously diverse?

Response: In addition to the constitutional prohibition on federally-funded religious discrimination, the United States has had important, decades-old federal statutory and regulatory policies against government-funded religious discrimination. I am aware that religious organizations retain an exemption under Title VII of the Civil Rights Act of 1964, as amended, that allows them to prefer members of their own religion in employment with their own private funds. However, where federal funding is involved (that is, where a religious organization has decided that its goals and mission are furthered by participating in government-funded social services programs and thus has elected to partner with government), religious organizations must play by the same rules and must abide by the same laws that apply to all other non-religious social providers participating in these programs. Thus, where federal funds are involved, religious organizations cannot discriminate on the basis of religion in employment.

I believe that America is stronger because it is religiously diverse. The United States is the most religiously diverse nation in the world. Americans are members of over 2000 religions, and an estimated 10-20 million Americans characterize themselves as "humanists" or "freethinkers."

5. Do you agree that the diversity of America is reflected in a wide variety of

distinctive religious and secular organizations in America?

Response: Yes. I would add that that diversity exists because of the strong separation of church and state principles that have guided this country since the adoption of the Constitution.

6. Do you agree that a Jewish organization will be less distinctively Jewish if it must hire non-Jews?

Response: See answer to Question #4.

7. Do you agree that a Jewish organization is less distinctively Jewish if more than half of its employees are non-Jewish?

8. Do you agree that a Jewish organization is less distinctively Jewish if it has no Jewish employees?

9. Do you agree that religious organizations which do not have employees of the same faith are less distinctively religious and we as a society are less diverse?

10. Do you agree that an important aspect in any organization is the ability to hire people who further the mission of the organization?

Response to Questions 7 through 10: Employers in federal programs generally may look to the level of a job applicant's motivation in furthering an employer's particular objectives as a factor in the selection process, but obviously all employers in federal programs must follow applicable legal restrictions on employment, ranging from labor, health, and safety restrictions, to requirements not to discriminate in employment based on any protected class, including religion. Maintaining a specific "character" of a religious organization is not an appropriate role for government.

11. Do you agree that the "wall of separation" prohibits the government from interfering with a church's decision that a person of similar religious belief is the most qualified candidate for a position?

Response: As stated above, where a church is selecting employees whose position will be funded only with the church's funds, Title VII provides an exemption for that house of worship that allows it to prefer members of its own religion for employment. However, where federal funding is involved (that is, where a religious organization has decided that its goals and mission are furthered by participating in government-funded social service programs and thus have elected to partner with government), religious organizations must play by the same rules and must abide by the same laws that apply to all other non-religious social providers participating in those programs. Thus, where federal funds are involved, religious organizations cannot discriminate on the basis of religion in employment.

The Constitution poses no general barrier to government enforcing any applicable civil rights law against any government-funded employer that discriminates on the basis of religion. The Supreme Court answered that question authoritatively when it held, in Bob Jones University, that the federal government could deny preferred tax status to a religiously-affiliated university that claimed a religious right to discriminate against its students based on race. The federal government has the same authority to deny federal benefits to any participant in a federal program that discriminates based on religion.

In circumstances involving federal funds, a religious organization, just as a community-based organization, is still free to asses whether potential candidates have the compassion to feed the poor, to assist the homeless with housing, and to counsel addicts. It is important to remember that many of the potential candidates who are seeking these social service positions are seeking these positions because they want to make a difference. Sometimes that motivation is the result of faith and sometimes it may be because of some other ethical belief or life experience. In addition, the social service field, in general, does not contain high paying positions. By denying applicants because of faith alone, employers may in fact be losing individuals who are the most motivated to truly serve their fellow citizens.

12) About a year and half ago, the Department of Justice's Bureau of Justice Statistics released data stating that about two-thirds of prisoners leaving state prisons would be rearrested for a crime within 3 years after their release. A study issued by the Texas Criminal Justice Policy Council last year showed that prisoners who completed a voluntary faith-based program had a recidivism rate of less than half of the control groups. This faith-based program is being duplicated in Iowa and your organization has sued to stop this faith-based program.

Response: Though Americans United does not work on criminal justice policy, I have reviewed the claims made by the Texas study regarding the InnerChange program. The record indicates that the Texas study does not, in fact, show that the InnerChange program reduces recidivism. The group of inmates who enrolled in the InnerChange program actually had a higher recidivism rate than the control group used in the study. I would direct the Subcommittee's attention to a review of this study by Mark A.R. Kleinman, a professor at the University of California at Los Angeles. In the review of the Texas study, Professor Kleinman found that the study engaged in what is known as "selection bias" (or "cooking the books," as Harvard public policy professor Anne Piehl called it). The InnerChange program started with 177 participants, but only 75 of them completed the program and qualified as "graduates." InnerChange did not count the 102 other participants who had dropped out or otherwise did not complete the program. Taken as a whole, the 177 participants did slightly worse than the control group.

Furthermore, the statistics that purport to show that the group of inmates who graduated from the program did better than the control group lack validity for several reasons. First, InnerChange defines a program "graduate" as a person who regularly holds down a job, goes to church, and does not commit a new crime during their first

six months out of prison. In other words, the definition of program "graduate" used for purposes of the recidivism study is circular, and the data in the study shows nothing more than that those inmates who do not commit a crime in their first six months out of prison are the inmates who are least likely to commit a crime after they get out of prison. In addition, the study does not show that the program itself is responsible for any reduction in recidivism. Because the program is a rigorous program whose in-prison phase is 18 months long, it may well be that those inmates who have sufficient self discipline and self control to make it all the way through such a program happen to be the inmates who are least likely to recidivate anyway, and those inmates would still be unlikely to recidivate regardless of whether they took the program or not. Also, the time frame used in the Texas study is too short to measure the long-run impact of the program on recidivism.

13) Isn't it true that your organization's lawsuit, if successful, would deprive Iowa prisoners of a chance to choose a faith-based program which has been successful?

Response: No. For the reasons explained above, there is no evidence that the program is successful. Also, there are other rehabilitation programs available to inmates in Iowa. In a deposition in the lawsuit, a Deputy Director of the Iowa Department of Corrections admitted that there is no evidence that the InnerChange program is any more effective at reducing recidivism than are secular therapeutic community and similar programs offered to inmates by the State of Iowa.

Given the larger faith-based debate, it is also important for the Subcommittee to be aware of several troubling aspects of this program particularly if it is to be held out as a "model" program.

Proselytization: The InnerChange program is based entirely on Evangelical Christianity and intertwines all of its components with Evangelical Christian religious exercises and messages. Indeed, InnerChange's own materials describe the program as "a revolutionary, Christ-centered, values-based pre-release program, supporting prison inmates through their spiritual and moral transformation." InnerChange instructional materials are designed to cause inmates to adopt InnerChange's Evangelical Christian beliefs. Numerous inmates in fact convert to InnerChange's version of Christianity as a result of participating in the program.

Beneficiary Discrimination and Coercion: The InnerChange program discriminates against inmates on the basis of religion and coerces inmates to participate in religious activity and instruction. Inmates in the InnerChange program are required to take part in Evangelical Christian worship services, to go to classes which present intensive Evangelical instruction, to memorize Bible verses, and to complete homework assignments and class tests that force the inmates to recite the Evangelical Christian teachings presented to them. Inmates who do not subscribe to the particular version of Christianity taught in the InnerChange program are not permitted to substitute services or instruction in their own faith for InnerChange's Evangelical Christian services or instruction. Thus, numerous inmates – including both non-Christians as

well as some Christian inmates – cannot enroll in the InnerChange program if they wish to remain true to their religious faith.

Furthermore, the InnerChange program's inmates receive numerous benefits not available to other inmates in the prison that house that program. For example, InnerChange participants have keys to their own cells and have access to private bathrooms. InnerChange inmates are also guaranteed prison jobs, are given increased contact with their family members, are given computer literacy instruction and access to computers that they can use in their spare time, are given access to electric musical instruments and a music room, and are less likely to receive major disciplinary reports. Moreover, many inmates can complete their required treatment modules earlier through the InnerChange program than they could otherwise, and can thereby accelerate their parole dates by going through the InnerChange program. In addition, InnerChange is housed in what is generally considered to be the most desirable medium security program in the Iowa prison system, and for many inmates enrolling in InnerChange is the only way that they can get transferred into that prison. The operation of InnerChange thus doles out special benefits only to those inmates who are willing to be subjected to intensive programming and instruction in a particular faith, and confronts inmates who do not subscribe to the teachings of that faith with a choice between sacrificing their own religious beliefs or foregoing the numerous benefits associated with this program.

As a result of the program's discriminatory nature and proselytization and coercion of beneficiaries, this program would not meet the standards set out by the House of Representatives when it passed the President's faith-based legislation, HR 7, in the 107th Congress.

Religious discrimination in employment: InnerChange requires all of its employees (as well as all of its volunteers) to sign an Evangelical Christian Statement of Faith. Non-Christians, and for that matter most Christians, cannot honestly sign this Statement of Faith, and are thereby disqualified based on their religious beliefs from employment with InnerChange. A portion of the salary of each InnerChange staff member is paid for with government funds. State funding of the InnerChange program thereby finances religious discrimination in employment.

14) Isn't it true, based on the Texas data, that the Iowa program's termination would result in more crime victims?

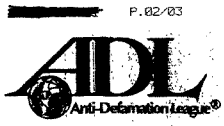
Response: No. For the reasons described above, there are major flaws in the Texas data. Moreover, the State of Iowa has been providing between $200,000 to about $400,000 per year to the InnerChange program, as well as substantial in-kind support. That money and in-kind support could be redirected to fund other Iowa programs for prisoners that reduce recidivism -- secular programs which, unlike InnerChange, do not require inmates to submit to intensive instruction in an evangelical form of Christianity in order to obtain the benefits of the program.

15) Isn't it true, based on the Texas data, that the Iowa program's data would result in greater need for Iowa police and eventually prisons?

Response: No, for the reasons described above. The money and state resources used to support the program could be redirected in a manner that would benefit all inmates equally, and would help all inmates to stay out of prison equally, regardless of what their religious faith is or whether they are willing to be subjected to eighteen months of intensive instruction in Evangelical Christian teachings.

16. From your point of view, who is primarily responsible for providing social services in the United States?

Response: As Americans United's mission is to advocate the separation of church and state and to preserve and extend religious liberty, this question is beyond the purview of our mission. However, I recognize that the federal, state, and local governments work in cooperation with community-based organizations of many kinds to deliver services to those in need. I also recognize that there are innumerable organizations that operate social service programs in their private capacity as well. In terms of programs that receive government assistance, I believe that such programs must be operated in a manner that meets constitutional standards, respects the religious liberty of beneficiaries, and does not subsidize religious discrimination. I also believe that it is vitally important that houses of worship and their affiliates be aware of the issues, both legal and ethical, involved in accepting government funds. Furthermore, there should not be separate legal, regulatory, or accounting standards for religious organizations operating such programs. Finally, religious organizations should not be shielded from accountability in their participation in government programs simply because they are religious.



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March 26, 2004

The Honorable Mark Souder
Chairman, House Subcommittee on Criminal Justice, Drug Policy and Human Resources
House Committee on Government Reform
B-373 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Souder:

Subject: "Legal and Practical Issues Related to the Faith-Based Initiative"

On behalf of the Anti-Defamation League, we make the following submission to the Subcommittee on Criminal Justice, Drug Policy and Human Resources for its hearings on "Legal and Practical Issues Related to the Faith-Based Initiative". We would ask that you include this statement in the final hearing record.

The Anti-Defamation League is one of the nation's leading human relations and civil rights organizations advocating for religious liberty in America. To that end, we work to oppose government interference, regulation, and entanglement with religion and strive to advance individual religious liberty. From our 90 years of day-to-day experience serving our constituents, ADL can testify that the more government and religion become entangled, the more threatening the environment becomes for each. In the familiar words of Justice Black: "A union of government and religion tends to destroy government and degrade religion." *Engel v. Vitale*, 370 U.S. 421, 431 (1962).

We recognize the vital role that religious institutions have historically played in addressing many of our nation's most pressing social needs, as a critical complement to government-funded programs. The League has supported government-funded partnerships with religiously-affiliated organizations – such as Catholic Charities, Jewish Community Federations, and Lutheran Social Services – that have helped to combat poverty and provided housing, education, and health care services for those in need. However, these programs have always incorporated vital safeguards that have protected beneficiaries from unwanted and unconstitutional proselytizing during the receipt of government-funded services. Previous safeguards also protected the integrity and sanctity of America's religious institutions, whose traditional independence from government has contributed to the flourishing of religion in our country.

We share the view expressed in your opening statements for this hearing: "The government does have a responsibility to ensure that its dollars are being spent in a manner consistent with the Constitution." Regrettably, the President implemented the faith-based initiative without Congressional approval or oversight through an Executive Order. This Order contains insufficient constitutional safeguards to ensure that social service funds will be spent in a manner consistent with the Constitution.

Anti-Defamation League of B'nai B'rith, 1100 Connecticut Avenue, NW, Suite 1020, Washington, DC 20036
(202) 452-8320 FAX (202) 296-2371 E-mail: natlgov@adl.org Web site: www.adl.org

We strongly believe that every component of the President's faith-based initiative must maintain essential constitutional safeguards for protecting both religious organization and beneficiaries. Past experience with government and religiously-affiliated organizations working as partners has demonstrated well that these necessary safeguards do not interfere with these organizations' ability to provide excellent service to our country's most needy citizens.

Within days of the Order's issuance, the Department of Housing and Urban Development ("HUD") issued proposed regulations pursuant to the Order. Thereafter, proposed regulations were issued by the Departments of Education, Justice, Labor, Veterans Affairs and several divisions of the Department of Health and Human Service ("HHS"). All of these proposed regulations state that government funds cannot be used for "inherently religious activities." However, we agree with many observers, including Professors Ira Lupu and Robert Tuttle of the Pew Forum's Roundtable on Religion and Social Welfare Policy, who have written that this standard is "an ambiguous and overly narrow expression of the Constitution's limitations."

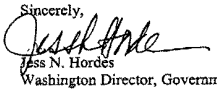
In response to the proposed regulations regarding federal agency contracting and grant-making authority, the Anti-Defamation League submitted comments which highlighted a number of constitutional flaws in an effort to persuade these Departments that they must maintain essential constitutional safeguards for protecting both religious organizations and beneficiaries. Specifically, our comments urged the Administration to:

- Ensure that no program beneficiary is subjected to unwanted and unconstitutional proselytizing when he or she receives government-funded social services;
- Ensure that taxpayer money does not fund religious discrimination in the hiring and firing of people who will deliver the services;
- Ensure that secular alternatives to religiously provided services are readily available, and that those who prefer secular alternatives are made aware of them and have realistic and convenient access to them;
- Ensure the development of proper firewalls between government-funded services and the core religious activities of a religious organization, so that taxpayer dollars are not channeled into other religious activities of sectarian organizations; and
- Ensure that extremist, terrorist or hatemongering groups are not able to receive government money.

We regret that the final rules published by several agencies do not reflect adequate safeguards in these areas.

As Congress continues to consider issues surrounding the Faith-Based Initiative, we urge you to continue to take an active role in oversight of the faith-based initiative. It is vitally important to consider and debate the consequences of government funding of religious institutions without proper safeguards and to bring these concerns to the attention of the Administration and the American public.

Sincerely,



Jess N. Hordes
Washington Director, Government and National Affairs